

## **EXHIBIT 20**

## Kristin Hendrix - October 27, 2021

1	<p>1 IN THE UNITED STATES BANKRUPTCY COURT</p> <p>2 FOR THE NORTHERN DISTRICT OF TEXAS</p> <p>3 DALLAS DIVISION</p> <p>4 --oOo--</p> <p>5</p> <p>6 HIGHLAND CAPITAL MANAGEMENT, )</p> <p>7 L.P., )</p> <p>8 )</p> <p>9 Plaintiff, )</p> <p>10 )</p> <p>11 vs. ) No. 21-03004-sgj</p> <p>12 )</p> <p>13 HIGHLAND CAPITAL MANAGEMENT FUND )</p> <p>14 ADVISORS, L.P., )</p> <p>15 )</p> <p>16 Defendants. )</p> <hr/> <p>17</p> <p>18 DEPOSITION OF</p> <p>19 KRISTIN HENDRIX</p> <p>20 October 27, 2021</p> <hr/> <p>21</p> <p>22 DEPOSITION OF KRISTIN HENDRIX, produced as a</p> <p>23 witness, duly sworn by me via videoconference at the</p> <p>24 instance of the DEFENDANTS, was taken in the</p> <p>25 above-styled and numbered cause on October 27, 2021,</p> <p>from 10:11 A.M. to 1:19 P.M., before BRANDON D. COMBS,</p> <p>CSR, RPR, in and for the State of Texas, reported by</p> <p>computerized machine shorthand, at 500 North Akard</p> <p>Street, 38th Floor, Dallas, Texas.</p>	3
2	<p>1 APPEARANCES</p> <p>2</p> <p>3 MUNSCH, HARDT, KOPF &amp; HARR, PC, 500 North</p> <p>4 Akard Street, Suite 3800, Dallas, TX 75201, represented</p> <p>5 by DAVOR RUKAVINA, Attorney at Law, appeared as counsel</p> <p>6 on behalf of the Defendants.</p> <p>7 Email: drukavina@munsch.com</p> <p>8</p> <p>9</p> <p>10 PACHULSKI, STANG, ZIEHL &amp; JONES, 780 Third</p> <p>11 Avenue, 34th Floor, New York, NY 10017-2024, represented</p> <p>12 by JOHN A. MORRIS, Attorney at Law, appeared as counsel</p> <p>13 on behalf of the Plaintiff.</p> <p>14 Email: jmorris@pszjlaw.com</p> <p>15</p> <p>16</p> <p>17 STINSON, LLP, 3102 Oak Lawn Avenue, Suite 777,</p> <p>18 Dallas, TX 75219, represented by MICHAEL AIGEN, Attorney</p> <p>19 at Law, appeared via videoconference as counsel on</p> <p>20 behalf of the Defendants Jim Dondero, HCMS and HCRE</p> <p>21 Partners.</p> <p>22 Email: michael.aigen@stinson.com</p> <p>23</p> <p>24</p> <p>25</p>	4
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<p style="text-align: right;">5</p> <p>1 Exhibit 17 Email from James Seery to 88  2 James Dondero, Jan 7, 2021, demand  3 on promissory note  4  5 Exhibit 18 Email from Kristin Hendrix, Jan 12, 90  6 2021, NexPoint Note to HCMLP  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>	<p style="text-align: right;">7</p> <p>1 understood my question; okay?  2 A. Yeah.  3 MR. MORRIS: Objection.  4 Q. (BY MR. RUKAVINA) Sometimes Counsel will  5 make objections. Unless he instructs you not to  6 answer, you're still required to answer my questions.  7 A. Okay.  8 Q. Now, in preparation for this deposition, did  9 you read the deposition transcript or any part of it of  10 Frank Waterhouse?  11 A. I did not.  12 Q. Did anyone provide you a synopsis or summary  13 of it?  14 A. Maybe a few bits and pieces, but...  15 MR. RUKAVINA: Off the record for a second.  16 (Off the record.)  17 Q. (BY MR. RUKAVINA) What do you mean bits and  18 pieces?  19 A. I don't recall anything specific that was  20 said, other than it was very long.  21 Q. Did you talk to Frank Waterhouse about it?  22 A. Did not.  23 Q. Other than Highland's legal counsel, did you  24 talk to anyone else about -- or -- strike that.  25 Other than Highland's legal counsel, did you</p>
<p style="text-align: right;">6</p> <p>1 KRISTIN HENDRIX,  2 having been first duly sworn, testified as follows:  3 EXAMINATION  4 Q. (BY MR. RUKAVINA) Good morning. If you'll  5 state your name.  6 A. Kristin Hendrix.  7 Q. We're doing this both ways. You're on the  8 Zoom remotely and they can see you, but I would ask  9 that you and I maintain eye contact. Of course, if  10 someone is asking you on the Zoom, then maintain  11 contact with them, if that's okay with you.  12 A. Sure.  13 Q. Have you been deposed before?  14 A. No.  15 Q. So I'm sure your counsel explained to you,  16 but very quickly, you understand that you're testifying  17 under oath and penalty of perjury as though you were in  18 a court of law?  19 A. Yes.  20 Q. And you understand my job is to ask clear  21 questions that you understand?  22 A. Yes.  23 Q. And if for whatever reason you don't  24 understand my questions, please let me know or ask me  25 to rephrase; otherwise, I'm going to assume that you</p>	<p style="text-align: right;">8</p> <p>1 talk to anyone about Frank Waterhouse's deposition from  2 last week?  3 A. I did not.  4 Q. Did you review -- strike that.  5 Did you see any of the video of  6 Mr. Waterhouse's deposition?  7 A. Nope.  8 Q. Same questions now for Mr. Seery, S-e-e-r-y.  9 Did you read any portion or the whole of  10 Mr. Seery's deposition from last week?  11 A. I did not.  12 Q. See any of the video?  13 A. No.  14 Q. Did you see any synopsis or summary of his  15 deposition?  16 A. No.  17 Q. Did you talk to him about his deposition?  18 A. I did not.  19 Q. Other than talking to Highland's counsel, did  20 you talk to anyone about Mr. Seery's deposition?  21 A. No.  22 Q. Other than talking to Highland's counsel, did  23 you talk to anyone about your deposition today?  24 A. Just John Morris and Dave Klos.  25 Q. When did you talk to Mr. Klos, K-l-o-s?</p>

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<p style="text-align: right;">9</p> <p>1 A. First time about this was last Friday. And</p> <p>2 then again Monday this week. And yesterday. And this</p> <p>3 morning.</p> <p>4 Q. Friday was there any lawyer present during</p> <p>5 your discussion with Mr. Klos?</p> <p>6 A. Yes, every time Mr. Morris was present.</p> <p>7 MR. RUKAVINA: Is it your position that those</p> <p>8 four discussions would be privileged, Counsel?</p> <p>9 MR. MORRIS: Yes.</p> <p>10 MR. RUKAVINA: Then we'll move on.</p> <p>11 Q. (BY MR. RUKAVINA) So we've established the</p> <p>12 four times you talked to Mr. Klos with counsel present.</p> <p>13 Did you do anything else related to or in preparation</p> <p>14 for today's deposition?</p> <p>15 A. Yes, probably went through and reviewed some</p> <p>16 emails, documentation that I may have had that I need</p> <p>17 to refresh memory on.</p> <p>18 Q. These documents and emails that you might</p> <p>19 have reviewed, did you supplementally provide them to</p> <p>20 counsel or anyone else?</p> <p>21 A. Yes.</p> <p>22 Q. This would have been in the last week or</p> <p>23 10 days?</p> <p>24 A. Yes.</p> <p>25 Q. Prior to the last week or 10 days, are you</p>	<p style="text-align: right;">11</p> <p>1 A. Yes.</p> <p>2 Q. And has your CPA license been current since</p> <p>3 then?</p> <p>4 A. Sure has.</p> <p>5 Q. Have you faced any kind of disciplinary</p> <p>6 action as a CPA?</p> <p>7 A. I have not.</p> <p>8 Q. Now, please walk me through your work</p> <p>9 history. Let's say starting with after you graduated</p> <p>10 college.</p> <p>11 A. Sure. December of 2005, which was shortly --</p> <p>12 sorry, 2004, shortly after I graduated from</p> <p>13 North Texas, I started at Highland. It was my first</p> <p>14 real job out of college. I have been there ever since,</p> <p>15 almost 17 years now.</p> <p>16 Have worked in the corporate accounting</p> <p>17 department the entire time. Started off as the AP</p> <p>18 associate, and worked my way up over the years and</p> <p>19 currently am the controller.</p> <p>20 Q. So even when you were getting your MBA and</p> <p>21 CPA you were employed by Highland?</p> <p>22 A. Yes.</p> <p>23 Q. Impressive. You're the controller today you</p> <p>24 mentioned?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">10</p> <p>1 aware that my office served requests for production on</p> <p>2 Highland?</p> <p>3 A. Yes.</p> <p>4 Q. And did you do anything prior to the last</p> <p>5 week or 10 days to try to search both your personal</p> <p>6 records and corporate records for any responsive</p> <p>7 documents?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Is that something that you understand legal</p> <p>10 counsel was charged with?</p> <p>11 A. Yes.</p> <p>12 Q. Let's go briefly now about your background,</p> <p>13 please.</p> <p>14 Where do you live?</p> <p>15 A. I live in Denton, Texas.</p> <p>16 Q. And what is your date of birth, please?</p> <p>17 A. January 26, 1982.</p> <p>18 Q. And walk me through your educational</p> <p>19 background, starting with any postsecondary, if any,</p> <p>20 schooling or college or anything like that.</p> <p>21 A. Sure. Graduated in 2004 from the University</p> <p>22 of North Texas with a degree in finance. Went on to</p> <p>23 get my MBA from SMU in 2009. And then went further and</p> <p>24 got my CPA license I believe in 2015.</p> <p>25 Q. In the state of Texas?</p>	<p style="text-align: right;">12</p> <p>1 Q. That's -- when did you become the controller,</p> <p>2 sometime February or March of this year?</p> <p>3 A. Yes.</p> <p>4 Q. Before you became the controller, what was</p> <p>5 your role at Highland?</p> <p>6 A. Right before that I was assistant controller.</p> <p>7 That was I believe April of 2020. Before that, the</p> <p>8 senior accounting manager, and I held that position for</p> <p>9 years.</p> <p>10 Q. So in May of 2019 would you have been the</p> <p>11 senior -- you said senior account?</p> <p>12 A. Senior accounting manager I believe was my</p> <p>13 title.</p> <p>14 Q. And would that have been your title in May of</p> <p>15 2017?</p> <p>16 A. Yes, I believe so.</p> <p>17 Q. And let's focus now on May 2019 as the senior</p> <p>18 accounting manager. How would you describe your role</p> <p>19 at Highland in May of 2019? What were your duties?</p> <p>20 A. Sure. I helped with treasury management</p> <p>21 function, cash forecasts and things like that. And</p> <p>22 oversaw the financial reporting from the last batch of</p> <p>23 AP to all the way to financials and reporting on</p> <p>24 audits.</p> <p>25 Q. Who did you report to in May of 2019?</p>

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<p style="text-align: right;">13</p> <p>1 A. David Klos.</p> <p>2 Q. What was Mr. Klos' title to your</p> <p>3 understanding back then?</p> <p>4 A. I believe he was the controller.</p> <p>5 Q. And do you have an understanding as to who</p> <p>6 Mr. Klos reported to back then?</p> <p>7 A. Yes, Frank Waterhouse.</p> <p>8 Q. Frank Waterhouse. Who was he in May of 2019?</p> <p>9 A. The CFO.</p> <p>10 Q. Is Mr. Klos still with Highland today?</p> <p>11 A. He is.</p> <p>12 Q. What is his role now?</p> <p>13 A. He's now CFO.</p> <p>14 Q. You mentioned treasury management as of 2019,</p> <p>15 May. What do you mean by treasury management? What is</p> <p>16 that?</p> <p>17 A. Generally speaking, we -- it's not just me as</p> <p>18 one person. We have checks and balances.</p> <p>19 My team would be in charge of sending out</p> <p>20 payments, reconciling bank statements, making sure</p> <p>21 money is in the right accounts, creating cash forecasts</p> <p>22 and reporting on those every week with the CFO and</p> <p>23 oftentimes the CEO.</p> <p>24 Generally that's everything that fell under</p> <p>25 the umbrella.</p>	<p style="text-align: right;">15</p> <p>1 A. Yes, you can say the debtor.</p> <p>2 Q. So when I say the debtor and you say the</p> <p>3 debtor we understand each other to mean Highland</p> <p>4 Capital Management, comma, LP; correct?</p> <p>5 A. Correct.</p> <p>6 Q. I apologize. In the December 2020 period, I</p> <p>7 would imagine that the debtor had its own -- that</p> <p>8 was -- strike that.</p> <p>9 We'll cut to the chase.</p> <p>10 In December of 2020, the debtor was providing</p> <p>11 services to various other entities affiliated with</p> <p>12 Mr. Dondero; correct?</p> <p>13 A. Correct.</p> <p>14 Q. That would have included NexPoint Advisors,</p> <p>15 LP?</p> <p>16 A. Correct.</p> <p>17 Q. And you're aware that NexPoint Advisors was</p> <p>18 the obligor on at least one promissory note to the</p> <p>19 debtor; correct?</p> <p>20 A. Correct.</p> <p>21 Q. And did the debtor in December 2020 provide</p> <p>22 so-called treasury management services to NexPoint</p> <p>23 Advisors?</p> <p>24 MR. MORRIS: Objection to the form of the</p> <p>25 question.</p>
<p style="text-align: right;">14</p> <p>1 Q. And would your description of treasury</p> <p>2 management be the same for the December 2020 period?</p> <p>3 A. Yes.</p> <p>4 Q. Who at Highland or which group at Highland in</p> <p>5 December of 2020 would have been responsible for noting</p> <p>6 that there are certain bills that need to be paid in</p> <p>7 the near or subsequent future.</p> <p>8 By way of, let's say, accounts payable or</p> <p>9 promissory notes or taxes or anything like that?</p> <p>10 A. Can you repeat your question.</p> <p>11 Q. Sure. So obviously, Highland was a pretty</p> <p>12 sophisticated business; correct?</p> <p>13 A. Yeah.</p> <p>14 MR. MORRIS: Objection to the form.</p> <p>15 Q. (BY MR. RUKAVINA) And had various accounts</p> <p>16 payable; right?</p> <p>17 A. Yes.</p> <p>18 Q. And it had maybe, let's just say, certain</p> <p>19 note obligations that it had to pay from time to time;</p> <p>20 correct?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question. Do you mean Highland Capital?</p> <p>23 MR. RUKAVINA: I mean Highland Capital</p> <p>24 Management; correct, I'm sorry. The debtor.</p> <p>25 Q. (BY MR. RUKAVINA) Can we say the debtor?</p>	<p style="text-align: right;">16</p> <p>1 THE WITNESS: Yes.</p> <p>2 Q. (BY MR. RUKAVINA) As part of that, in</p> <p>3 December 2020, would it have been employees of the</p> <p>4 debtor that would have scheduled for potential payment,</p> <p>5 subject to approval by NexPoint, NexPoint's future</p> <p>6 obligations as they were coming due?</p> <p>7 A. Yes, we would have scheduled, only with</p> <p>8 approval.</p> <p>9 Q. And would that have included NexPoint's</p> <p>10 obligations on the promissory note to Highland?</p> <p>11 A. Yes.</p> <p>12 Q. Back to your background briefly.</p> <p>13 Do you have any legal training at all?</p> <p>14 A. I do not.</p> <p>15 Q. Do you have any courses, have you taken any</p> <p>16 courses in drafting promissory notes?</p> <p>17 A. No.</p> <p>18 Q. Do you believe that your expertise as a</p> <p>19 certified public accountant gives you any greater</p> <p>20 qualification than anyone else to prepare a promissory</p> <p>21 note?</p> <p>22 MR. MORRIS: Objection to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: No.</p> <p>25 Q. (BY MR. RUKAVINA) Have you ever prepared or</p>

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<p style="text-align: right;">17</p> <p>1 drafted a promissory note?</p> <p>2 A. That term is probably used loosely. I have</p> <p>3 not completely drafted a promissory note from scratch,</p> <p>4 no.</p> <p>5 Q. And we'll go into the details. Fair to say</p> <p>6 that you have taken a form promissory note and revised</p> <p>7 it?</p> <p>8 A. Absolutely.</p> <p>9 Q. Was this part of your job in May of 2019 at</p> <p>10 Highland?</p> <p>11 A. Yes.</p> <p>12 Q. Going back to the May 2019 time frame, were</p> <p>13 you part of a particular group at Highland, like</p> <p>14 accounting or legal or compliance?</p> <p>15 A. Yes, corporate accounting.</p> <p>16 Q. Corporate accounting. That's what you</p> <p>17 described before about treasury management and</p> <p>18 projections and forecasts?</p> <p>19 A. Yes.</p> <p>20 Q. In May of 2019, was it the practice at</p> <p>21 Highland that corporate accounting would be responsible</p> <p>22 for drafting intercompany promissory notes?</p> <p>23 A. Not necessarily drafting, but updating a</p> <p>24 draft that had been previously produced and provided by</p> <p>25 our legal team, yes.</p>	<p style="text-align: right;">19</p> <p>1 Q. By updating, what do you mean?</p> <p>2 A. There's a few things that would need</p> <p>3 updating, the date.</p> <p>4 Q. Maker?</p> <p>5 A. Maker.</p> <p>6 Q. Amount?</p> <p>7 A. The dollar amount, the interest rate.</p> <p>8 Q. And is it your testimony that the corporate</p> <p>9 accounting group would do these things on its own</p> <p>10 without necessarily the involvement of the legal group?</p> <p>11 MR. MORRIS: Objection to the form of the</p> <p>12 question.</p> <p>13 THE WITNESS: Generally, yes.</p> <p>14 Q. (BY MR. RUKAVINA) Do you have any memory in</p> <p>15 or before May of 2019 if the corporate -- I'm sorry, if</p> <p>16 the legal group became involved in drafting or</p> <p>17 executing any prior intercompany promissory notes?</p> <p>18 A. Yes.</p> <p>19 Q. Explain to me what you remember about that.</p> <p>20 A. I do know that they were involved with</p> <p>21 drafting restructured notes. So taking demand notes</p> <p>22 and turning them into a 30-year amort note.</p> <p>23 That was in 2017. I know for sure that they</p> <p>24 were involved in that because it was something</p> <p>25 different. We weren't just updating a demand note.</p>
<p style="text-align: right;">18</p> <p>1 Q. And Highland in May -- the debtor in May of</p> <p>2 2019 did have a legal department?</p> <p>3 A. Yes.</p> <p>4 Q. Kind of like the corporate accounting, there</p> <p>5 was a separate legal department; correct?</p> <p>6 A. Correct.</p> <p>7 Q. And who would have been in charge of that</p> <p>8 department in May of 2019?</p> <p>9 A. Scott Ellington, E-I-I-n-g-t-o-n.</p> <p>10 Q. In May of 2019 or by May of 2019 was there</p> <p>11 any practice at Highland as to whether its legal</p> <p>12 department would be involved with the drafting or</p> <p>13 execution of any intercompany promissory notes?</p> <p>14 MR. MORRIS: Objection to the form of the</p> <p>15 question.</p> <p>16 THE WITNESS: It depends on the note.</p> <p>17 Q. (BY MR. RUKAVINA) What did it depend on?</p> <p>18 A. Our typical practice is if we have a loan</p> <p>19 with certain affiliates that it's a demand note. We</p> <p>20 have a template that we have used for years that was</p> <p>21 created by either our internal legal team or an outside</p> <p>22 law firm, I'm not sure which.</p> <p>23 The typical practice is always updating a few</p> <p>24 things on that template, getting it executed, and</p> <p>25 filing it in our audit folders.</p>	<p style="text-align: right;">20</p> <p>1 Q. Is it your testimony that to the best of your</p> <p>2 recollection by May of 2019 and in May of 2019 it would</p> <p>3 have been the corporate accounting group that would</p> <p>4 have handled routine intercompany demand notes?</p> <p>5 A. Yes.</p> <p>6 Q. And you can think of more than one instance</p> <p>7 on which that happened?</p> <p>8 A. Yes.</p> <p>9 Q. And this is not a memory test, but going back</p> <p>10 in time can you try to give an estimate of what year</p> <p>11 that first started happening, that the corporate</p> <p>12 accounting would handle the drafting or execution of</p> <p>13 intercompany demand notes?</p> <p>14 A. As far as I can remember.</p> <p>15 Q. Is it your testimony that as -- maybe even</p> <p>16 going back as far as 2005 there were intercompany</p> <p>17 demand notes?</p> <p>18 A. Yes.</p> <p>19 Q. I don't know how to ask this question, but</p> <p>20 was this a significant thing in corporate accounting or</p> <p>21 just another routine deal when you handled demand</p> <p>22 notes?</p> <p>23 MR. MORRIS: Objection to the form of the</p> <p>24 question.</p> <p>25 THE WITNESS: This is a routine job duty that</p>



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<p style="text-align: right;">21</p> <p>1 we routinely did.</p> <p>2 Q. (BY MR. RUKAVINA) Between 2005 and 2019, do</p> <p>3 you remember any maker on these intercompany demand</p> <p>4 notes actually being required to pay a demand note, in</p> <p>5 other words, Highland making demand?</p> <p>6 A. Not that I can specifically recall.</p> <p>7 Q. Do you have any recollection as to what</p> <p>8 happened to these intercompany demand notes over the</p> <p>9 years between 2005 and 2019?</p> <p>10 A. Yeah. Typically anytime specifically Jim</p> <p>11 Dondero would need to move money between related</p> <p>12 parties, he would pay down -- when I say him, he would</p> <p>13 have us in corporate accounting move money around, pay</p> <p>14 off notes, reissue new notes somewhere else.</p> <p>15 So a way to move money around between his</p> <p>16 entities.</p> <p>17 Q. So let's use just hypotheticals here so that</p> <p>18 I'm not trying to pin you down to any specific fact.</p> <p>19 But between 2005 and 2019, is it fair to say</p> <p>20 that if some Dondero entity that's not the debtor</p> <p>21 needed money and the debtor had money, then Dondero</p> <p>22 would have the debtor lend money to that entity on a</p> <p>23 demand note basis?</p> <p>24 A. So long as they have the cash available to do</p> <p>25 so.</p>	<p style="text-align: right;">23</p> <p>1 A. If the debtor needed cash to lend to another</p> <p>2 entity.</p> <p>3 Q. I see. So again, it's all one big happy</p> <p>4 family, and whoever needed cash, the cash moved around;</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. Was it Mr. Dondero that basically was the</p> <p>8 only deciding person in each instance that you're aware</p> <p>9 of in those 14 years as to when a note would be made or</p> <p>10 repaid?</p> <p>11 A. I can't answer specifically to that. Most of</p> <p>12 my direction came from our CFO at the time,</p> <p>13 Frank Waterhouse. So what conversations he would have</p> <p>14 with Jim Dondero, I can't answer to that. But I would</p> <p>15 suspect so, yes.</p> <p>16 Q. And in May of 2019 or by May of 2019, did you</p> <p>17 communicate personally, by email or telephone, in</p> <p>18 person, periodically with Jim Dondero?</p> <p>19 A. I can't say periodically, no.</p> <p>20 Q. Well, I'm not trying to put words in your</p> <p>21 mouth. Is it fair to say that you kind of -- your</p> <p>22 communications stopped with Mr. Waterhouse and</p> <p>23 Waterhouse communicated with Dondero, as opposed to you</p> <p>24 regularly communicating with Dondero?</p> <p>25 A. That's typical, yes.</p>
<p style="text-align: right;">22</p> <p>1 Q. "They" being the debtor?</p> <p>2 A. Debtor, yes.</p> <p>3 Q. And is it fair to say, then, again</p> <p>4 hypothetically without any specifics, that if the</p> <p>5 debtor maybe from time to time needed money and one of</p> <p>6 these other entities had cash, then Dondero would cause</p> <p>7 that other entity to pay down the demand note?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: Can you repeat that.</p> <p>11 Q. (BY MR. RUKAVINA) Sure. So I think you</p> <p>12 mentioned that from time to time these entities would</p> <p>13 pay down these demand notes?</p> <p>14 A. To the debtor?</p> <p>15 Q. To the debtor.</p> <p>16 A. Yes.</p> <p>17 Q. And is that, hypothetically again, is that</p> <p>18 because on occasion the debtor might have needed cash</p> <p>19 and these entities had the cash, so Dondero would have</p> <p>20 them pay back the note?</p> <p>21 MR. MORRIS: Objection to the form of the</p> <p>22 question.</p> <p>23 THE WITNESS: Yes, that could be a reason.</p> <p>24 Q. (BY MR. RUKAVINA) Can you think of any other</p> <p>25 reason in those 14 years?</p>	<p style="text-align: right;">24</p> <p>1 Q. Can you think of any instances in which</p> <p>2 Mr. Dondero gave you any instructions or you came to</p> <p>3 him seeking any instructions, without some intermediary</p> <p>4 between the two of you?</p> <p>5 A. No, usually Frank was present.</p> <p>6 Q. Would you categorize Mr. Waterhouse as kind</p> <p>7 of guarding with jealousy his access to Mr. Dondero?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: No.</p> <p>11 Q. (BY MR. RUKAVINA) What kind of boss was he</p> <p>12 in May of 2019? Was he laid back, or was he a jerk?</p> <p>13 Was he demanding? How would you characterize him in</p> <p>14 May of 2019?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: I would say he was a good boss.</p> <p>18 Q. (BY MR. RUKAVINA) You think he was competent</p> <p>19 as far as his job went?</p> <p>20 A. Yes, very competent.</p> <p>21 Q. Do you think he was competent as far as his</p> <p>22 job went in December of 2020?</p> <p>23 A. Yes.</p> <p>24 Q. January 2021?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">25</p> <p>1 Q. Was he patient and understanding as a boss?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Was he ever condescending or rude to</p> <p>4 anyone in your presence?</p> <p>5 A. No.</p> <p>6 Q. So you're the controller today at Highland,</p> <p>7 the debtor, the reorganized debtor; right?</p> <p>8 A. Yes.</p> <p>9 Q. And who do you report to? You mentioned</p> <p>10 Mr. Klos is the CFO?</p> <p>11 A. Yes.</p> <p>12 Q. And do you also report to Mr. Seery?</p> <p>13 A. Yes, I think everybody does.</p> <p>14 Q. And I don't need to know details, but I take</p> <p>15 it you're on a salary from reorganized Highland?</p> <p>16 A. Yes.</p> <p>17 Q. Is any part of your compensation merit or</p> <p>18 bonus based?</p> <p>19 A. It could potentially be.</p> <p>20 Q. Have you had any discussions with Mr. Seery</p> <p>21 or Mr. Klos about some sort of bonus compensation?</p> <p>22 A. Yes.</p> <p>23 Q. Has anything been agreed to?</p> <p>24 A. Yes.</p> <p>25 Q. And again, I don't need to know the exact</p>	<p style="text-align: right;">27</p> <p>1 A. Correct.</p> <p>2 Q. And how Highland, reorganized Highland</p> <p>3 collects these promissory notes is going to play no</p> <p>4 part in your base and bonus compensation to your</p> <p>5 understanding; is that correct?</p> <p>6 A. To my knowledge, yes.</p> <p>7 Q. So you have no direct or indirect stake in</p> <p>8 the outcome of these litigations?</p> <p>9 A. No.</p> <p>10 Q. And you understand that I represent HCMFA and</p> <p>11 NexPoint?</p> <p>12 A. Yes.</p> <p>13 Q. And these court reporters are not familiar</p> <p>14 with some of our terminology. NAP [verbatim], if we</p> <p>15 say that, that means NexPoint; right?</p> <p>16 A. Uh-huh.</p> <p>17 Q. You have to say yes or no.</p> <p>18 A. Yes, NPA, NexPoint.</p> <p>19 Q. NPA. And when we say NexPoint, you and I are</p> <p>20 meaning NexPoint Advisors, LP; right?</p> <p>21 A. Yes.</p> <p>22 Q. And when we say HCMFA, we're meaning Highland</p> <p>23 Capital Management Fund Advisors, LP, yes?</p> <p>24 A. Yes.</p> <p>25 Q. What is your understanding of the two</p>
<p style="text-align: right;">26</p> <p>1 numbers. What would your bonus compensation consist</p> <p>2 of? How would it be decided?</p> <p>3 A. It's actually -- was decided when I agreed to</p> <p>4 stay on the Highland team back in February 2021, so</p> <p>5 it's in my employment agreement.</p> <p>6 Q. So what's your bonus compensation?</p> <p>7 A. I'm not sure I understand what you're asking.</p> <p>8 Q. So is the bonus discretionary on the part of</p> <p>9 Highland?</p> <p>10 A. No, it's a set amount.</p> <p>11 Q. And what triggers it or governs the set</p> <p>12 amount?</p> <p>13 A. Just it gets paid out on a certain date of</p> <p>14 the year. It's very straightforward, set out in my</p> <p>15 employment agreement.</p> <p>16 Q. Is it irrespective of the performance of the</p> <p>17 reorganized debtor?</p> <p>18 A. Yes.</p> <p>19 Q. So why do you call it a bonus instead of base</p> <p>20 compensation?</p> <p>21 A. That's what it's called in my agreement.</p> <p>22 Q. So your base compensation and your bonus,</p> <p>23 it's your testimony, you're going to earn it</p> <p>24 irrespective of whether reorganized Highland does good</p> <p>25 or bad with respect to its profitability?</p>	<p style="text-align: right;">28</p> <p>1 lawsuits, the one against HCMFA and the one against</p> <p>2 NexPoint, that you're being deposed on today?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 Q. (BY MR. RUKAVINA) Who is suing who and for</p> <p>6 what?</p> <p>7 A. I don't know all the details.</p> <p>8 Q. So we've established that you've discussed</p> <p>9 these lawsuits in the last week or a little bit more</p> <p>10 with legal counsel. I don't want to talk about that.</p> <p>11 Prior to these recent discussions, did you</p> <p>12 have any discussions with anyone at Highland about its</p> <p>13 lawsuits against HCMFA and NexPoint on promissory</p> <p>14 notes?</p> <p>15 A. Repeat that again.</p> <p>16 Q. Sure. So remember we're excluding the recent</p> <p>17 discussions in the last week or 10 days with counsel;</p> <p>18 right?</p> <p>19 A. Okay.</p> <p>20 Q. Are you aware that in January of 2021 the</p> <p>21 debtor sued NexPoint to collect on a promissory note?</p> <p>22 A. I'm aware that demand notices were sent.</p> <p>23 Q. So until recently you weren't aware that a</p> <p>24 lawsuit had been filed?</p> <p>25 A. There's a lot of lawsuits filed. I can't</p>



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<p style="text-align: right;">29</p> <p>1 keep track of what is what or what we're talking about</p> <p>2 at certain times.</p> <p>3 Q. But you have no distinct memory of that?</p> <p>4 A. Correct.</p> <p>5 Q. And same question for the lawsuit that the</p> <p>6 debtor filed against HCMFA in January.</p> <p>7 Do you have any specific memory of that</p> <p>8 lawsuit having been filed?</p> <p>9 A. Not specifically.</p> <p>10 Q. You mentioned that you're aware that on or</p> <p>11 before January 2021, demand letters had been sent?</p> <p>12 A. Yes.</p> <p>13 Q. Did you play any role in either drafting</p> <p>14 those demand letters or the decision to send them?</p> <p>15 A. No.</p> <p>16 Q. So going back to my question about these</p> <p>17 lawsuits, do you have any memory of anyone asking</p> <p>18 you -- again, excluding the last week or two.</p> <p>19 Do you have any memory of anyone asking you</p> <p>20 to do anything with respect to either or both of these</p> <p>21 lawsuits?</p> <p>22 A. No.</p> <p>23 Q. You have no memory of Mr. Waterhouse,</p> <p>24 Mr. Klos, Mr. Surgent, or Mr. Seery asking for any</p> <p>25 background information or your input at all on these</p>	<p style="text-align: right;">31</p> <p>1 about either or both of these two promissory notes?</p> <p>2 A. Sure, yes.</p> <p>3 Q. What do you remember?</p> <p>4 A. I remember seeing them because I've recently</p> <p>5 looked at them. I see them all the time in our loan</p> <p>6 tracking spreadsheets. My team would have been</p> <p>7 responsible for the whole process that I explained</p> <p>8 before when it comes to a promissory note.</p> <p>9 Q. And --</p> <p>10 MR. MORRIS: Are you finished?</p> <p>11 THE WITNESS: Yes.</p> <p>12 Q. (BY MR. RUKAVINA) And we have an email here</p> <p>13 that might give some more context to that if I can find</p> <p>14 it here.</p> <p>15 This will be Exhibit 3. This is an email</p> <p>16 from David Klos to corporate accounting dated May 2,</p> <p>17 2019.</p> <p>18 (Whereupon, Exhibit 3 was marked for</p> <p>19 identification.)</p> <p>20 Q. (BY MR. RUKAVINA) Do you see this email,</p> <p>21 ma'am?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Corporate accounting, would that email</p> <p>24 group have included you?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">30</p> <p>1 two lawsuits?</p> <p>2 MR. MORRIS: Better not have been --</p> <p>3 THE WITNESS: No.</p> <p>4 Q. (BY MR. RUKAVINA) Who did I say? Did I</p> <p>5 misspeak? Okay.</p> <p>6 Now we're going to have some exhibits here.</p> <p>7 And do you have the labels?</p> <p>8 Let's take a minute break off the record.</p> <p>9 (Off the record.)</p> <p>10 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to</p> <p>11 provide to you a promissory note in the original</p> <p>12 principal amount of \$5 million from HCMFA. This is the</p> <p>13 PDF version of this as filed with the Court for</p> <p>14 collection. It's going to be Exhibit 1.</p> <p>15 (Whereupon, Exhibit 1 was marked for</p> <p>16 identification.)</p> <p>17 Q. (BY MR. RUKAVINA) Before you look at</p> <p>18 Exhibit 1, I'm going to do the same thing for</p> <p>19 Exhibit 2, which is a promissory note from HCMFA for</p> <p>20 \$2.4 million, dated May 2, 2019.</p> <p>21 (Whereupon, Exhibit 2 was marked for</p> <p>22 identification.)</p> <p>23 Q. (BY MR. RUKAVINA) Again, Ms. Hendrix, these</p> <p>24 are the PDF versions of these notes as filed with the</p> <p>25 Court. Sitting here today, do you remember anything</p>	<p style="text-align: right;">32</p> <p>1 Q. And this email says, Kristin, can you or</p> <p>2 Hayley. Do you think that Kristin was you?</p> <p>3 A. I do.</p> <p>4 Q. Do you remember receiving this email?</p> <p>5 A. Not explicitly.</p> <p>6 Q. So it says Blair. Who would Blair be?</p> <p>7 A. Blair was our AP associate.</p> <p>8 Q. What is her last name?</p> <p>9 A. At this time it would have been Roeber,</p> <p>10 R-o-e-b-e-r.</p> <p>11 Q. Okay. And did it subsequently change?</p> <p>12 A. Yes, it's now Hillis, H-i-l-l-i-s.</p> <p>13 Q. Please send \$2.4 million from HCMPL to HCMFA.</p> <p>14 This is a new interco loan. Kristin, can you or Hayley</p> <p>15 please prep a note for execution. I'll have further</p> <p>16 instructions later today, but please process this</p> <p>17 payment as soon as possible.</p> <p>18 Did I read that correctly?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have any memory of whether this email</p> <p>21 relates to Exhibit 2, the \$2.4 million promissory note?</p> <p>22 A. It seems like it does, same date, same</p> <p>23 amount.</p> <p>24 Q. Do you have any memory, or in reviewing your</p> <p>25 files did you see any similar email or document that</p>

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<p style="text-align: right;">33</p> <p>1 would have related to Exhibit 1, the \$5 million 2 promissory note? 3 A. Yes. I believe there's another email for 4 that one. 5 Q. And do you believe that you provided that to 6 counsel? 7 A. Yes. 8 Q. Recently or some time ago? 9 A. Well, I don't think I provided it, so I'm not 10 sure when they got it. I know it has been provided. 11 Q. You know that it has? 12 A. Uh-huh. 13 Q. How do you know? 14 A. Because I've seen it. 15 Q. In the production that was produced to me? 16 A. Yes. 17 Q. And also from a David Klos? 18 A. This one, or on the -- when I say this one, 19 on the \$2.4 million or the 5-? 20 Q. On the \$5 million note. 21 A. I'm not sure. 22 Q. Okay. Let me make sure I understand you 23 correctly. 24 Sitting here today you believe that there is 25 another email referencing the \$5 million loan that has</p>	<p style="text-align: right;">35</p> <p>1 the door, is typically how this works. 2 Q. Is the answer generally the same for the 3 \$5 million note? 4 A. Yes. 5 Q. So is it fair to say that typically, 6 obviously not every time, but typically your corporate 7 accounting group when it would see intercompany 8 transfers in large amounts would believe that they were 9 loans? 10 MR. MORRIS: Objection to the form of the 11 question. 12 THE WITNESS: Typically they were loans. 13 There's not really another way to get money from one 14 entity to another. And if they were papered as a loan, 15 that means we were told to set it up that way. 16 Q. (BY MR. RUKAVINA) What do you mean papered 17 as a loan? Aren't you papering it as a loan when 18 someone makes the promissory note? 19 A. Yes, because we're told by somebody to do 20 that. 21 Q. And in this instance, Mr. Klos on Exhibit 3 22 told the group that this was a loan; right? 23 A. Correct. But he would have spoken with 24 Frank Waterhouse or Jim Dondero prior to that, before 25 telling anybody to do that.</p>
<p style="text-align: right;">34</p> <p>1 been produced to my office? 2 A. Yes. I believe so. 3 Q. Okay. And going off memory, did it kind of 4 say the same thing as this Exhibit 3 except that it 5 referenced \$5 million? 6 MR. MORRIS: Objection to the form of the 7 question. 8 THE WITNESS: Generally, should have said the 9 similar situation, yeah. 10 Q. (BY MR. RUKAVINA) So Mr. Klos says, this is 11 a new interco loan, for Exhibit 3. Other than what he 12 told you, that this is an intercompany loan, did anyone 13 else tell you or did you have any other information on 14 May 2, 2019 that this was a loan? 15 A. I don't specifically recall these 16 conversations, but I can tell you our normal practice 17 would be we would either likely be in a cash meeting -- 18 and I say "we." Would have been myself, Dave Klos, 19 Frank Waterhouse, potentially even Jim Dondero. 20 But I don't recall conversations on this 21 specific date. But general practice is we would talk 22 about it. 23 Oftentimes, Frank would either call Dave or I 24 or stop by and tell us that, we need to send money to 25 an affiliate, paper up a new loan, let's get a wire out</p>	<p style="text-align: right;">36</p> <p>1 Q. Okay. And do you have any knowledge that he 2 did speak to Mr. Waterhouse or Mr. Dondero before 3 sending this email? 4 A. Again, I don't have specific knowledge on the 5 exact conversations, but that's always how it has 6 worked. 7 Q. That's how it was for 14 or 15 years; 8 correct? 9 A. Yes. 10 Q. But you're logically assuming that it 11 happened here. You don't know that it happened here; 12 correct? 13 MR. MORRIS: Objection to the form of the 14 question. 15 THE WITNESS: I would have to be fairly 16 certain that it did, even though I can't recall 17 specific conversations. 18 Q. (BY MR. RUKAVINA) Did you ask Mr. Klos about 19 who told him that this is a new intercompany loan on 20 Exhibit 3? 21 A. No. It's quite possible I was involved in 22 the conversation. I reported to him. I wouldn't 23 question his authority. 24 Q. Did you ask Mr. Klos who told him that the 25 \$5 million deal was also an intercompany loan?</p>

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<p style="text-align: right;">37</p> <p>1 A. I did not ask that specific question that I 2 can recall.</p> <p>3 Q. Did you ask Mr. Waterhouse whether either of 4 these transactions were loans?</p> <p>5 A. I'm sure Mr. Waterhouse is the one that told 6 us they were loans. We wouldn't just paper up a loan, 7 send money out and call it a loan and account for it 8 that way, unless somebody specifically told us.</p> <p>9 Q. Do you have any memory of Mr. Waterhouse 10 orally or in writing or email or in any way, shape, or 11 form on or about May 2 or 3, 2019 telling you that the 12 2.4 million or \$5 million transfers were intercompany 13 loans?</p> <p>14 A. No specific knowledge of exact conversations, 15 but I'm certain that those conversations were had 16 because that's the only way that we would have papered 17 up a loan, sent money out as a loan, had them on our 18 financials for two years.</p> <p>19 Q. So you're saying that this email, Exhibit 3, 20 from Mr. Klos was not enough, that there would have 21 been other things that happened to make you and other 22 people in your group confident that these were loans?</p> <p>23 A. Yes.</p> <p>24 Q. And these other things would have been in 25 person or by email?</p>	<p style="text-align: right;">39</p> <p>1 a consent fee that the advisor of the Global Allocation 2 Fund had promised to pay to shareholders of that fund, 3 and it was in the amount of \$5 million roughly.</p> <p>4 So both of these loans were for those 5 purposes respectfully.</p> <p>6 Q. And were you in May of 2019 also aware that 7 in addition to the \$2.4 million, there was another more 8 than \$5 million paid to that fund by HCMFA's insurer as 9 compensation for the NAV error?</p> <p>10 A. By the insurance company, yes.</p> <p>11 Q. So the \$7.4 million, you understood then was 12 a loan as opposed to compensation to HCMFA?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Did you understand in May of 2019 that 15 it had been the debtor and its valuation team that 16 caused that NAV error?</p> <p>17 MR. MORRIS: Objection to the form of the 18 question.</p> <p>19 THE WITNESS: I can't answer that. I was not 20 involved with the activities leading up to the NAV 21 error.</p> <p>22 Q. (BY MR. RUKAVINA) How do you know that the 23 \$7.4 million were being transferred for the NAV error 24 and consent fee?</p> <p>25 A. Because I do know about both of those</p>
<p style="text-align: right;">38</p> <p>1 A. Most likely in person via phone call.</p> <p>2 Q. Okay. So again, you have no specific memory 3 of it, but based on the 14-year pattern and conduct you 4 believe that you would have discussed these two 5 transfers with Mr. Waterhouse and he would have told 6 you these are loans?</p> <p>7 MR. MORRIS: Objection to the form of the 8 question.</p> <p>9 THE WITNESS: Correct.</p> <p>10 Q. (BY MR. RUKAVINA) And then would he have 11 told you to take care of the promissory notes, or was 12 that Mr. Klos here in Exhibit 3?</p> <p>13 A. It could have been both. It's clearly Dave 14 in this email, but Frank could have also said that to 15 me.</p> <p>16 Q. Now, do you -- strike that.</p> <p>17 In May of 2019, did you know or were you told 18 why these \$7.4 million were being transferred from the 19 debtor to HCMFA?</p> <p>20 A. Yes. I do have recollection that -- I do 21 know that there were two big events in May 2019. 22 2.4 million was related to a TerreStar NAV error, with 23 one of the funds advised by HCMFA. That's Global 24 Allocation Fund.</p> <p>25 Similar with the \$5 million loan. There was</p>	<p style="text-align: right;">40</p> <p>1 instances and I do know that HCMFA needed to pay these 2 dollar amounts for both of those.</p> <p>3 Q. And you knew that in May of 2019?</p> <p>4 A. Yes.</p> <p>5 Q. How did you know that in May of 2019?</p> <p>6 A. It was lots of discussions had been going on 7 around both of these issues for months. These weren't 8 surprises to anybody.</p> <p>9 Q. So although you weren't involved directly 10 with the NAV error issues, it was more or less common 11 knowledge in your accounting group?</p> <p>12 A. Correct.</p> <p>13 Q. Do you have any knowledge at all as to 14 whether Mr. Dondero decided to transfer these 15 \$7.4 million not as a loan, but to compensate HCMFA for 16 the debtor's alleged liability?</p> <p>17 A. Have not heard of that.</p> <p>18 Q. Ever?</p> <p>19 A. Never.</p> <p>20 Q. But you also never heard Mr. Dondero say that 21 these \$7.4 million were a loan; correct?</p> <p>22 A. That was not told to me directly.</p> <p>23 Q. Again, you're logically assuming that based 24 on many instances of intercompany transfers in the 25 14 years prior to that?</p>

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<p style="text-align: right;">41</p> <p>1 MR. MORRIS: Objection to the form of the</p> <p>2 question. Mischaracterizes the testimony.</p> <p>3 THE WITNESS: Correct.</p> <p>4 Q. (BY MR. RUKAVINA) I think you answered</p> <p>5 correct?</p> <p>6 A. Correct.</p> <p>7 Q. And you mentioned that after these notes, you</p> <p>8 saw them on internal financials and that reinforces</p> <p>9 your view that these were loans?</p> <p>10 A. Correct.</p> <p>11 Q. But as of May 2 and 3, 2019, no one had told</p> <p>12 you directly that these are loans?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question. It's in writing.</p> <p>15 THE WITNESS: That's not what I'm saying at</p> <p>16 all.</p> <p>17 Q. (BY MR. RUKAVINA) Other than Mr. Klos' email</p> <p>18 or emails, no one told you on May 2 or May 3, 2019 that</p> <p>19 you remember today that these were loans?</p> <p>20 A. It quite possibly could have been told to me</p> <p>21 in addition to this email.</p> <p>22 Q. I understand. You just have no memory of</p> <p>23 that today; correct?</p> <p>24 A. Correct.</p> <p>25 Q. Is there anything that you can think of</p>	<p style="text-align: right;">43</p> <p>1 answers don't count and I'm in trouble.</p> <p>2 6 will be the \$5 million note, and 7 will be</p> <p>3 the \$2.4 million note.</p> <p>4 (Whereupon, Exhibits 6 &amp; 7 were marked for</p> <p>5 identification.)</p> <p>6 Q. (BY MR. RUKAVINA) Okay. So Exhibit 4 and 5</p> <p>7 are the Word documents. Do you have any memory of you</p> <p>8 doing anything with respect to these two Word</p> <p>9 documents?</p> <p>10 A. I don't have specific memory, but generally</p> <p>11 speaking, it was my job to update promissory note</p> <p>12 templates and create promissory notes.</p> <p>13 Q. So do you believe that -- we discussed</p> <p>14 earlier that your group would have used a template and</p> <p>15 that it would have made changes reflecting the maker,</p> <p>16 amount, date, interest rate.</p> <p>17 Do you believe you were the one with respect</p> <p>18 to 4 and 5 that updated that template to create 4</p> <p>19 and 5?</p> <p>20 A. I'm sure that I was, yes.</p> <p>21 Q. Well, Exhibit 6 -- do you know what metadata</p> <p>22 is?</p> <p>23 A. Sort of.</p> <p>24 Q. What's your understanding of what metadata</p> <p>25 is?</p>
<p style="text-align: right;">42</p> <p>1 sitting here today to refresh your memory on that</p> <p>2 point?</p> <p>3 A. I do not think so. I'm sure there was</p> <p>4 conversation that unfortunately would not be in an</p> <p>5 email.</p> <p>6 Q. Now, we have the Word documents, the Word</p> <p>7 version of these two promissory notes, and you're going</p> <p>8 to have rely on me that I printed these out as</p> <p>9 Mr. Morris sent to me. If I'm misleading you on that,</p> <p>10 then I'm in trouble and your answers don't count.</p> <p>11 So please assume that I didn't doctor these</p> <p>12 and that I printed them out as they were prepared to</p> <p>13 me; okay?</p> <p>14 A. Yes.</p> <p>15 Q. So Exhibit 4 will be the \$5 million note and</p> <p>16 Exhibit 5 will be the 2.4 million.</p> <p>17 (Whereupon, Exhibits 4 &amp; 5 were marked for</p> <p>18 identification.)</p> <p>19 Q. (BY MR. RUKAVINA) Before I ask about 4 and</p> <p>20 5, to be fair to you and refresh your memory, I'm going</p> <p>21 to provide you printouts of the metadata, metadata --</p> <p>22 I'm not sure how to better say that -- for both notes.</p> <p>23 And again I'm representing to you that I</p> <p>24 printed out the metadata without doctoring it, so</p> <p>25 please assume that's true, and if it's not, your</p>	<p style="text-align: right;">44</p> <p>1 A. Just in context from speaking on it recently,</p> <p>2 it's going to tell you who made changes to the</p> <p>3 documents, is what I would assume.</p> <p>4 MR. RUKAVINA: Go off the record for one</p> <p>5 second.</p> <p>6 (Off the record.)</p> <p>7 Q. (BY MR. RUKAVINA) So a little bit of error</p> <p>8 on my part. We'll have some more metadata, but we can</p> <p>9 still talk about 6 and 7.</p> <p>10 It says the author JFORSHEE, J-F-O-R-S-H-E-E.</p> <p>11 Do you recall or do you know who that person was?</p> <p>12 A. I recognize the name, and it makes sense.</p> <p>13 This says Strasburger is the company. I think he was</p> <p>14 one of the lawyers that we had used at some point in</p> <p>15 time.</p> <p>16 Q. Strasburger is a law firm?</p> <p>17 A. Yes.</p> <p>18 Q. And then it says, so Exhibit 6 created May 3,</p> <p>19 Exhibit 7 created May 2, modified, accessed. Does that</p> <p>20 to the best of your understanding comport with when</p> <p>21 Exhibits 4 and 5 were actually created?</p> <p>22 A. Can you repeat that.</p> <p>23 Q. Yeah. We'll wait for the rest of the</p> <p>24 metadata. But let's go back to 4 and 5.</p> <p>25 In and by May 2019 I think you mentioned that</p>

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<p style="text-align: right;">45</p> <p>1 it was your job to, I think you said update promissory 2 notes? 3 MR. MORRIS: Objection to the form of the 4 question. 5 Q. (BY MR. RUKAVINA) Let me take that question 6 back. 7 You testified earlier that your group would 8 have taken a template and used it to create or prepare 9 a new promissory note; right? 10 A. Right. 11 Q. How would you call that process? What word 12 would you use for that process? 13 A. Let's call it papering the loan. 14 Q. In May of 2019, was it your job to paper the 15 loan? 16 A. Yes. 17 Q. Would anyone else at the corporate accounting 18 group have been responsible to paper a loan? 19 A. At that time, I don't think so. I think I 20 was the one doing it. 21 Q. I think you mentioned that you think you 22 papered the loan, respecting Exhibits 4 and 5; correct? 23 A. Correct. 24 Q. You have no distinct present memory of 25 papering 4 and 5; correct?</p>	<p style="text-align: right;">47</p> <p>1 that Mr. Waterhouse's signature there appears on the 2 Word document as an image. 3 A. Uh-huh. 4 Q. Do you have any memory of whether there was 5 an image that someone would have affixed of 6 Mr. Waterhouse's signature to promissory notes? 7 A. Yes. We typically always -- he was 8 completely fine with having documentations -- sorry, 9 having documents signed or executed with his 10 e-signature. 11 Q. Would these pictures of his signature have 12 been his e-signature in May of 2019? 13 A. Yes. 14 Q. So let's just clarify that because I don't 15 want there to be any confusion. 16 I know there's some computer programs out 17 there that are restrictive and have passwords before 18 any signature is printed. And then there's some people 19 that use a stamp or an image; right? 20 MR. MORRIS: Objection to the form of the 21 question. 22 Q. (BY MR. RUKAVINA) Are you following me? 23 A. I follow you. 24 Q. In May of 2019, did Mr. Waterhouse have any 25 specific program that would have to -- you would have</p>
<p style="text-align: right;">46</p> <p>1 A. Correct. 2 Q. Can you think of anyone else at the corporate 3 accounting group that would have papered 4 and 5? 4 MR. MORRIS: Objection to the form of the 5 question. 6 THE WITNESS: The only other person that 7 could have would either be Dave Klos or Hayley Eliason. 8 Q. (BY MR. RUKAVINA) What was Hayley's role in 9 May of 2019? 10 A. She was the accountant. I can't recall her 11 specific title. 12 Q. Now, in May of 2019 when you papered a loan, 13 would you have consulted with either internal or 14 external legal before finishing that loan or presenting 15 it for signature or anything else? 16 A. Not if it was just our standard demand note 17 that we already had a template on. 18 Q. So would it have been your general course in 19 May of 2019, if you prepared Exhibits 4 and 5, not to 20 seek advice from internal or legal before proceeding 21 with these notes? 22 A. With these two specific notes? 23 Q. Yes. 24 A. Yes. 25 Q. If we flip the page, I'll represent to you</p>	<p style="text-align: right;">48</p> <p>1 to go through before it would spit out his e-signature, 2 or was he fine with you and his staff using an image 3 like this? 4 A. He was fine with using his e-signature, and 5 what is on these documents was that exact e-signature. 6 So I don't know if he had -- I don't know how it was 7 created originally. 8 Q. The e-signature? 9 A. E-signature. 10 Q. Do you have any memory with respect to 11 Exhibits 4 and 5 of getting Mr. Waterhouse's specific 12 approval to use his e-signature? 13 A. I don't have exact specific memory, same as 14 conversations on these loans. But he would have had to 15 approve this loan in the dollar amount, the day. 16 He would have been the one directing us to 17 create these loans. In past practice he has always 18 approved using his e-signature to execute documents. 19 Q. How would he have approved Exhibits 4 and 5? 20 By that, I mean by email or memorandum? How would he 21 have approved it in May of 2019? 22 MR. MORRIS: Objection to the form of the 23 question. 24 THE WITNESS: I would assume that, as I've 25 stated previously, these directions were coming</p>



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<p style="text-align: right;">49</p> <p>1 directly from him to paper a loan. These changes that  2 are made are only to the dollar amount. Interest rate  3 is pulled right off the IRS website.  4 That is his approval to paper a loan and in  5 fact execute or approve the loan.  6 <b>Q. (BY MR. RUKAVINA) In May of 2019, would</b>  7 <b>Mr. Waterhouse -- what was his practice as far as using</b>  8 <b>an ink signature on documents as opposed to an</b>  9 <b>e-signature? Did he have a practice?</b>  10 <b>MR. MORRIS:</b> Objection to the form of the  11 question.  12 <b>THE WITNESS:</b> He has never specifically said,  13 on certain documents I would like to ink it with my  14 signature. Probably at this time, 99 percent of the  15 stuff my team got his signature on was his e-signature.  16 I think it just depended on the group and what it was.  17 <b>Q. (BY MR. RUKAVINA) So how would he authorize</b>  18 <b>you or your team to use his e-signature for any given</b>  19 <b>document in May of 2019?</b>  20 <b>MR. MORRIS:</b> Objection to the form of the  21 question.  22 <b>THE WITNESS:</b> Through the conversations that  23 would have been had before these emails went out saying  24 paper loan.  25 <b>Q. (BY MR. RUKAVINA) And -- okay. So, and</b></p>	<p style="text-align: right;">51</p> <p>1 <b>Q. But you have no memory of that authority or</b>  2 <b>approval, specifically for 4 and 5?</b>  3 <b>MR. MORRIS:</b> Objection. Asked and answered  4 about five times.  5 <b>THE WITNESS:</b> Same as my answer I just gave.  6 <b>Q. (BY MR. RUKAVINA) And I think you mentioned</b>  7 <b>that in your years at Highland your team papered</b>  8 <b>hundreds of loans?</b>  9 <b>A. Yeah.</b>  10 <b>Q. In your time at Highland, is it your</b>  11 <b>testimony that the accounting -- corporate accounting</b>  12 <b>department never made a mistake with respect to</b>  13 <b>anything that it did?</b>  14 <b>MR. MORRIS:</b> Objection to the form of the  15 question.  16 <b>THE WITNESS:</b> No, I did not say that.  17 <b>Q. (BY MR. RUKAVINA) Do you recall any mistakes</b>  18 <b>in your time at the corporate accounting group at</b>  19 <b>Highland that had been made, any significant mistakes?</b>  20 <b>MR. MORRIS:</b> Objection to the form of the  21 question.  22 <b>THE WITNESS:</b> Significant mistakes, not that  23 I can recall.  24 <b>Q. (BY MR. RUKAVINA) No accounts payable</b>  25 <b>mistakenly paid?</b></p>
<p style="text-align: right;">50</p> <p>1 <b>after his e-signature was used either on these notes or</b>  2 <b>other documents in May of 2019, would you have brought</b>  3 <b>the documents back to him for any kind of verification?</b>  4 <b>MR. MORRIS:</b> Objection to the form of the  5 question.  6 <b>THE WITNESS:</b> Probably not. These are all  7 very standard. We've papered hundreds of loans. So I  8 think he trusted that we can handle updating a date and  9 a dollar amount on these loan templates.  10 <b>Q. (BY MR. RUKAVINA) Do you know or believe, or</b>  11 <b>your recent review of documents, did it reveal an email</b>  12 <b>from Mr. Waterhouse to you specifically authorizing his</b>  13 <b>e-signature on Exhibits 4 and/or 5?</b>  14 <b>A. Not that I recall seeing, no.</b>  15 <b>Q. Sitting here today, do you have any memory of</b>  16 <b>Mr. Waterhouse orally or otherwise specifically</b>  17 <b>authorizing you to affix his e-signature to Exhibits 4</b>  18 <b>and/or 5?</b>  19 <b>A. Specifically on these loans, no, I don't</b>  20 <b>recall those conversations. But, again, our practice</b>  21 <b>has always been we have this discussion, he's under the</b>  22 <b>understanding that we're going to paper the loans, he's</b>  23 <b>always comfortable with using his e-signature.</b>  24 <b>This is not something me or my team would</b>  25 <b>have done without that authority and approval from him.</b></p>	<p style="text-align: right;">52</p> <p>1 <b>MR. MORRIS:</b> Objection to the form of the  2 question.  3 <b>THE WITNESS:</b> I cannot specifically answer  4 that question with 17 years of work to recall, sorry.  5 <b>MR. RUKAVINA:</b> Just take a quick break. If  6 you need a restroom -- off the record.  7 (Off the record.)  8 <b>Q. (BY MR. RUKAVINA) Going back to Exhibits 4</b>  9 <b>and 5.</b>  10 <b>Mr. Waterhouse signed these promissory notes.</b>  11 <b>Is there any particular reason why he signed them as</b>  12 <b>opposed to Dondero or someone else?</b>  13 <b>A. No particular reason. He's an officer for</b>  14 <b>both companies. He's a signatory.</b>  15 <b>Q. Who decided, if anyone, to your knowledge,</b>  16 <b>that he would be the one signing the notes, these two</b>  17 <b>notes?</b>  18 <b>A. I don't know who would have decided that, but</b>  19 <b>typically if Frank specifically wanted Jim Dondero to</b>  20 <b>sign it, he would say, take it to Jim to sign.</b>  21 <b>Q. Do you have a recollection of</b>  22 <b>Mr. Dondero -- strike that.</b>  23 <b>Do you have a recollection of Mr. Waterhouse</b>  24 <b>signing other promissory notes?</b>  25 <b>A. Yes. I know for sure he has signed other</b></p>



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<p style="text-align: right;">53</p> <p>1 promissory notes. I can't tell you explicitly which 2 ones. 3 (Off the record.) 4 Q. (BY MR. RUKAVINA) Are you saying that in May 5 of 2019 -- strike that. 6 By May of 2019, was it not the standard 7 practice at the debtor that Mr. Dondero would sign 8 intercompany promissory notes? 9 MR. MORRIS: Objection to the form of the 10 question. 11 THE WITNESS: No, that's not standard 12 practice. Just needed to be somebody -- somebody who 13 is a signer for the entity on the incumbency 14 certificate. 15 Q. (BY MR. RUKAVINA) Was there a standard 16 practice, or did you just describe the standard 17 practice that it was someone on the incumbency 18 certificate? 19 A. That's correct, somebody on the incumbency 20 certificate. Frank is a great prospect to sign, with 21 giving direction to set loans up, send money out. Why 22 wouldn't he sign it. 23 Q. Do you have any memory sitting here today of 24 Mr. Waterhouse telling you or agreeing that he would be 25 signing these two promissory notes for HCMFA?</p>	<p style="text-align: right;">55</p> <p>1 Q. Well, let's go back a little bit in time. 2 Would you agree that at some point prior to 3 2019 the standard course was that paper notes were ink 4 signed? 5 MR. MORRIS: Objection to the form of the 6 question. 7 THE WITNESS: I could not tell you 8 specifically when notes were or were not ink signed. 9 Q. (BY MR. RUKAVINA) Was there any repository, 10 to the best of your recollection, as of May 2019 where 11 any ink-signed original promissory notes were kept by 12 the debtor? 13 A. No. We always would scan them in, save them 14 on our shared drive. Never had paper copies. 15 Q. So that's -- fixing to ask that question 16 next. 17 So Exhibits 4 and 5, would they even have 18 been printed after they were papered up? 19 MR. MORRIS: Objection to the form of the 20 question. 21 THE WITNESS: Possibly. Somebody could have 22 printed them. 23 Q. (BY MR. RUKAVINA) Do you remember printing 24 Exhibits 4 or 5 sitting here today? 25 A. I don't recall printing them myself, no.</p>
<p style="text-align: right;">54</p> <p>1 A. Not specifically, but he didn't need to tell 2 me. He typically would tell me if he wanted Jim to 3 sign them. 4 Q. Sitting here today, do you have any memory of 5 giving Mr. Waterhouse these two promissory notes after 6 they were prepared? 7 A. I specifically don't remember walking into 8 his office and providing it to him, but he could have 9 found it on our shared drive if he wanted to. 10 Q. Do you have any memory or in your recent 11 review of documents did you see any email to the effect 12 of you sending either or both of these promissory notes 13 to Mr. Waterhouse after they were papered up? 14 A. I don't have any specific recollection, 15 again, but he had access to look at them. 16 Q. On the shared drive? 17 A. Yes. 18 Q. In May -- I'm going to ask this question 19 multiple different ways, so let's start with kind of 20 the general. 21 In May or by May of 2019, was there a 22 repository, electronic or paper, where the debtor kept 23 original promissory notes that were owed -- where money 24 was owed to it? 25 A. Original meaning paper?</p>	<p style="text-align: right;">56</p> <p>1 Q. Would there have been a reason to print them 2 out if, as you said, the notes were stored 3 electronically? 4 MR. MORRIS: Objection to the form of the 5 question. 6 THE WITNESS: There could be a reason. I 7 don't recall that I for any reason printed these 8 particular notes. 9 Q. (BY MR. RUKAVINA) So as of May 2019, is it 10 your testimony that notes that were papered up by the 11 corporate accounting group would have been saved 12 electronically on the system and not kept by way of 13 paper copies in some file? 14 A. Correct. That's right. 15 Q. This is additional metadata. And you 16 understand I have a bit of an accent. 17 What are we on? 18 (Off the record.) 19 Q. (BY MR. RUKAVINA) Ms. Hendrix, Exhibit 8 is 20 going to be additional metadata for the May 3, 2019, 21 note that we've been looking at, and Exhibit 9 will be 22 the same thing for the May 2 note that we've been 23 looking at. 24 That's 8. That's 9. 25 (Whereupon, Exhibits 8 &amp; 9 were marked for</p>

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<p style="text-align: right;">57</p> <p>1 identification.)</p> <p>2 Q. (BY MR. RUKAVINA) Ms. Hendrix, I'm going to</p> <p>3 represent to you again that my office has faithfully</p> <p>4 printed this metadata out without doctoring or changing</p> <p>5 anything, and I ask you to assume that. If I'm wrong</p> <p>6 on that, then your answers don't count.</p> <p>7 Ma'am, as I look at these two documents, it</p> <p>8 says last modified by Kristin Hendrix.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. And that would have -- that could have only</p> <p>12 been you; correct, in that department?</p> <p>13 A. I hope so, yes.</p> <p>14 Q. Seeing these two documents, can you agree</p> <p>15 with me now that it was in fact you that papered up</p> <p>16 Exhibits 4 and 5?</p> <p>17 MR. MORRIS: Objection. Asked and answered.</p> <p>18 THE WITNESS: I would assume so since my name</p> <p>19 is on it, yes.</p> <p>20 Q. (BY MR. RUKAVINA) Both of these documents</p> <p>21 say last printed -- I'm sorry. If you see related</p> <p>22 dates, it says last printed May 2, 2019, 11:27 A.M. Do</p> <p>23 you have any memory or any understanding as to why that</p> <p>24 date would be there or what last printed might mean?</p> <p>25 A. I don't know why it says last printed the day</p>	<p style="text-align: right;">59</p> <p>1 Obviously, you're welcome to use them anytime you need</p> <p>2 to, but I think we're done with those notes.</p> <p>3 Going to hand you what we're going to mark as</p> <p>4 Exhibit 10, which is an email chain produced by the</p> <p>5 debtor.</p> <p>6 And I don't know how anyone on the video will</p> <p>7 see it. I apologize. I'll have to send it to you</p> <p>8 later.</p> <p>9 (Whereupon, Exhibit 10 was marked for</p> <p>10 identification.)</p> <p>11 Q. (BY MR. RUKAVINA) Now, if you start with</p> <p>12 this email chain, it starts on November 19, 2020 from</p> <p>13 Jack Donohue to you, copying Mr. Seery and various</p> <p>14 others.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And Mr. Donohue is asking you to provide him</p> <p>18 the financial records of HCMFA due to the funds owed</p> <p>19 the debtor.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Do you recall that email from Mr. Donohue to</p> <p>23 you?</p> <p>24 A. Yes.</p> <p>25 Q. Do you recall any context or subsequent</p>
<p style="text-align: right;">58</p> <p>1 before it was created. That doesn't make any sense. I</p> <p>2 have no idea.</p> <p>3 Unless, the only thing I could think of is if</p> <p>4 we changed this template. When I say "this," the</p> <p>5 \$2.4 million loan, which was papered on the 2nd, and</p> <p>6 then used it for the next day for the template to</p> <p>7 update the date, possibly. I have no idea.</p> <p>8 Q. Well, it may be -- and I understand that you</p> <p>9 don't have any memory; we're speculating a little bit.</p> <p>10 It may be, looking at Exhibits 8 and 9, that</p> <p>11 the \$2.4 million note was printed on May 2, and then</p> <p>12 after having been used as the template for the</p> <p>13 \$5 million note, the \$5 million note would not have</p> <p>14 been printed.</p> <p>15 Does that sound possible?</p> <p>16 MR. MORRIS: Objection to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: Sure, it could be possible.</p> <p>19 Q. (BY MR. RUKAVINA) But you don't have any</p> <p>20 memory either way?</p> <p>21 A. No. And when these were printed they're</p> <p>22 printed to PDF, I believe, is probably what that means.</p> <p>23 Q. Okay.</p> <p>24 We're going to switch gears a little bit now,</p> <p>25 if you have to make a pile of those exhibits.</p>	<p style="text-align: right;">60</p> <p>1 discussions or how that email came to be, or do you</p> <p>2 just recall getting that email?</p> <p>3 A. I just recall getting the email.</p> <p>4 Q. You write back, hi Jack, Scott Ellington is</p> <p>5 going to follow up with the board on this request.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Do you recall why you told Jack that</p> <p>9 Mr. Ellington was going to follow up?</p> <p>10 A. From what I recall, I had asked Frank</p> <p>11 Waterhouse if it was okay to send these financials</p> <p>12 over, and he wanted me to check with Scott Ellington</p> <p>13 and that was Scott's response.</p> <p>14 Q. And did he tell you why he wanted you to</p> <p>15 check with Scott Ellington?</p> <p>16 A. Just to make sure that there were no issues</p> <p>17 with sending them over.</p> <p>18 Q. Mr. Seery writes back, can I get this ASAP.</p> <p>19 HCMFA is way overdue.</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. And Mr. Seery writes again, it's about a week</p> <p>23 later, and he says, this is an explicit direction from</p> <p>24 me as CEO of HCMLP. But it looks like you are the</p> <p>25 recipient of that December 2 email; correct?</p>

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<p style="text-align: right;">61</p> <p>1 A. Yes.</p> <p>2 Q. Do you remember him sending you that email</p> <p>3 and copying those people?</p> <p>4 A. Yes.</p> <p>5 Q. Do you remember anything happening in that</p> <p>6 week between his November 25 and December 2 email along</p> <p>7 the same discussion lines?</p> <p>8 A. I don't remember anything. I think I was</p> <p>9 probably left out of any discussions, and if there were</p> <p>10 any, it was with Scott Ellington and whomever he had</p> <p>11 discussions with.</p> <p>12 Q. Then subsequent, on December 2, Mr. Seery</p> <p>13 writes, all, Scott and I have spoken and agree that the</p> <p>14 information should be provided to James immediately.</p> <p>15 Would that have been James Romey, do you</p> <p>16 think?</p> <p>17 A. Yes.</p> <p>18 Q. And who was James Romey?</p> <p>19 A. He also worked for DSI.</p> <p>20 Q. And then he writes, Kristin, please proceed</p> <p>21 with James. If anyone has any questions or issues,</p> <p>22 please call me.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Did you proceed with James Romey?</p>	<p style="text-align: right;">63</p> <p>1 you, copying Waterhouse, Seery, a bunch of others.</p> <p>2 Where he says, at the direction of Jim Seery,</p> <p>3 please provide DSI with the requested information for</p> <p>4 each entity below.</p> <p>5 And you'll see the entity includes both of my</p> <p>6 clients, NexPoint Advisors and HCMFA. And the</p> <p>7 information includes bank statements, income</p> <p>8 statements, balance sheets, cash flows.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you recall this email?</p> <p>12 A. Vaguely, yes.</p> <p>13 Q. Did you have any concerns when you received</p> <p>14 this email?</p> <p>15 A. Concerns about the email, no. I probably</p> <p>16 checked with -- I would have checked with Frank to make</p> <p>17 sure it was okay to send this first.</p> <p>18 Q. Frank Waterhouse?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have any understanding as to why</p> <p>21 Mr. Donohue requested bank statements, income</p> <p>22 statements, balance sheets for NexPoint and/or HCMFA?</p> <p>23 A. I do not.</p> <p>24 Q. Did he or anyone at DSI tell you why they</p> <p>25 were requesting that?</p>
<p style="text-align: right;">62</p> <p>1 A. I further made sure that Scott was okay, to</p> <p>2 confirm. He said yes, please do, and I did send them</p> <p>3 to James Romey.</p> <p>4 Q. So Mr. Seery has some of it in this email</p> <p>5 chain, but do you have any understanding as to why</p> <p>6 either DSI or Mr. Seery in November of 2020 was asking</p> <p>7 for the financial records of HCMFA?</p> <p>8 A. I do not, other than what's in this email.</p> <p>9 Q. Did you discuss with either DSI or Mr. Seery</p> <p>10 or Mr. Waterhouse in November or December 2020 whether</p> <p>11 the demand notes from HCMFA should be demanded, should</p> <p>12 be called?</p> <p>13 A. I did not have discussions.</p> <p>14 Q. Next exhibit is Exhibit 11. This is another</p> <p>15 email chain.</p> <p>16 And I apologize to the folks on the video.</p> <p>17 I'll have to get it to you during some break.</p> <p>18 MR. MORRIS: Hold on one second.</p> <p>19 MR. RUKAVINA: Sure. Off the record.</p> <p>20 (Off the record.)</p> <p>21 (Whereupon, Exhibit 11 was marked for</p> <p>22 identification.)</p> <p>23 Q. (BY MR. RUKAVINA) Exhibit 11, Ms. Hendrix,</p> <p>24 if you'll go to the beginning of this email chain, is</p> <p>25 an email on January 6, 2021, again from Mr. Donohue to</p>	<p style="text-align: right;">64</p> <p>1 A. Not that I can recall.</p> <p>2 Q. If we go forward in time, you'll see that</p> <p>3 Mr. Waterhouse is writing back to Mr. Donohue. And</p> <p>4 then Mr. Seery interjects and says, these are HCMLP</p> <p>5 business records. Please provide them as requested by</p> <p>6 Jack ASAP.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. And it looks like you were not privy to</p> <p>10 subsequent communications where Frank and Jim were</p> <p>11 talking back and forth about this. You were not privy</p> <p>12 to those, like you weren't blind copied or anything to</p> <p>13 your recollection?</p> <p>14 A. No.</p> <p>15 Q. Did you in fact on or after January 6, 2021,</p> <p>16 provide Mr. Donohue or anyone on his team the</p> <p>17 information that he had requested as it relates to</p> <p>18 NexPoint and/or HCMFA?</p> <p>19 A. Without going back to check, I couldn't</p> <p>20 answer yes or no for certain.</p> <p>21 Q. So I think you mentioned when you received</p> <p>22 the email from Mr. Donohue you would have checked with</p> <p>23 Frank. And what do you remember asking Frank or</p> <p>24 checking with him about?</p> <p>25 A. I don't remember asking him specifically. In</p>

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<p style="text-align: right;">65</p> <p>1 fact, it's possible that Frank just responded on his 2 own here to Jack. Again, would have been a 3 conversation that I can't specifically recall. 4 Q. Sure. And you don't specifically remember 5 today providing Mr. Donohue any of that information; 6 right? 7 A. Right. 8 Q. You don't specifically remember today having 9 a discussion with Mr. Donohue or Seery or anyone else 10 at or about that time as to why they were wanting this 11 information? 12 A. Correct. 13 Q. Exhibit 12, Ms. Hendrix, is going to be the 14 December 3, 2020, letter by which Highland called the 15 notes. 16 MR. MORRIS: Objection to the form of the 17 question if there was one. 18 (Whereupon, Exhibit 12 was marked for 19 identification.) 20 Q. (BY MR. RUKAVINA) Are you familiar with 21 Exhibit 12, Ms. Hendrix? 22 A. No, I haven't seen this. 23 Q. Prior to today, you don't remember seeing 24 this? 25 A. No.</p>	<p style="text-align: right;">67</p> <p>1 to? 2 A. We had a standing weekly cash meeting with 3 Frank Waterhouse, myself, Jim Seery. I can't recall 4 everyone on it. Some of the DSI folks. We go through 5 cash forecasts. It's a 13-week cash forecast. We go 6 through it every week. 7 It's going to lay out incoming and outgoing 8 payments that are forecasted, of which these term loans 9 were in those forecasts, so they were discussed. 10 Q. And Mr. Morris produced some of those to me 11 this morning. I haven't had time to go through them. 12 But it is your recollection in November and 13 December of 2020 the fact of the NexPoint term note 14 being out there was known to Mr. Seery? 15 A. Yes. 16 Q. And the fact of an upcoming December 31, 17 2020, payment was known to Mr. Seery? 18 A. Yes. 19 Q. So with that background, in November and 20 December of 2020, do you remember discussing with 21 anyone anything to the effect of, oh, it really would 22 be better if NexPoint defaulted on that note so we 23 could call it? 24 A. No. 25 Q. Did Mr. Seery ever state to you anything in</p>
<p style="text-align: right;">66</p> <p>1 Q. I think you're answering no? 2 A. No, sorry, no. 3 Q. On or before December 3, 2020, did anyone 4 discuss with you whether Highland should call the 5 demand notes that were outstanding by HCMFA? 6 A. No. 7 Q. Do you recall in December 2020 any discussion 8 with anyone at the debtor about the NexPoint 9 \$30.7 million term note? 10 A. Repeat your question again, please. 11 Q. Sure. So you're familiar, and we'll talk 12 about it in some detail, with the NexPoint 13 \$30.7 million note? 14 A. Yes. 15 Q. And again, we'll talk about it, but at that 16 point in time that was a term note; correct? 17 A. Correct. 18 Q. Do you remember in the December 2020 or 19 November 2020 time frame discussing with anyone at the 20 debtor the status of that NexPoint note? 21 A. Yes, we would have discussed this on a weekly 22 basis in our cash meetings that we would have had, as 23 identifying that there are payments due on these loans 24 in December. 25 Q. What weekly cash meetings are you referring</p>	<p style="text-align: right;">68</p> <p>1 November or December of 2020 about how the debtor might 2 monetize that NexPoint note? 3 A. No. 4 Q. Did he discuss with you any potential sale of 5 that promissory note? 6 A. No. 7 Q. Did DSI ever discuss with you in November or 8 December 2020 any potential sale of that note? 9 A. No. 10 Q. Or how to monetize that note? 11 A. No. 12 Q. So -- well, strike that. 13 Did Mr. Seery or anyone at DSI, or anyone at 14 all, in November or December of 2020 state any words to 15 you to the effect that they were hoping that NexPoint 16 would default on that note? 17 A. Never. 18 Q. Or that it would be in the debtor's interest 19 for NexPoint to default on that note? 20 A. No. 21 Q. In November or December of 2020, do you 22 recall having any discussions with Mr. Seery or anyone 23 at DSI as to the collectibility of that note? And by 24 that I mean whether NexPoint can pay the note? 25 A. I don't specifically recall. It most likely</p>

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<p style="text-align: right;">69</p> <p>1 came up in cash conversations.</p> <p>2 Q. I think you were assistant controller back</p> <p>3 then?</p> <p>4 A. Yes.</p> <p>5 Q. Would a discussion of a borrower's ability to</p> <p>6 repay have been something within your general sphere of</p> <p>7 responsibility in that time frame?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 THE WITNESS: It depends on who the borrower</p> <p>11 is, and at that time we did -- we had knowledge over</p> <p>12 that information, so yes.</p> <p>13 Q. (BY MR. RUKAVINA) Well, you've seen some</p> <p>14 instructions or requests from Mr. Seery to you and DSI</p> <p>15 to you for financial information of NexPoint and HCMFA.</p> <p>16 We've gone through those documents; right?</p> <p>17 A. Yes.</p> <p>18 Q. Does that refresh your memory that there was</p> <p>19 any internal discussion that you were privy to about</p> <p>20 the ability of HCMFA and/or NexPoint to pay these</p> <p>21 notes?</p> <p>22 A. I don't recall that specifically being asked.</p> <p>23 It could have.</p> <p>24 Q. Did you ever at any point in time have any</p> <p>25 employment or officer or any title or role with</p>	<p style="text-align: right;">71</p> <p>1 not?</p> <p>2 A. Yes.</p> <p>3 Q. What's your understanding?</p> <p>4 A. Either November 30 or December 1, 2020, I</p> <p>5 received a phone call from Frank Waterhouse that said,</p> <p>6 no payments are going from any of the Advisors to</p> <p>7 Highland.</p> <p>8 Q. Can you be more specific with what he said?</p> <p>9 A. That's what he said.</p> <p>10 Q. So he said no payments from the Advisors to</p> <p>11 Highland?</p> <p>12 A. Yes.</p> <p>13 Q. Did he reference the promissory note</p> <p>14 expressly?</p> <p>15 A. No.</p> <p>16 Q. But no payments means?</p> <p>17 A. Nothing.</p> <p>18 Q. That would logically in your mind include the</p> <p>19 promissory note?</p> <p>20 A. Yes.</p> <p>21 Q. Did you ask him why?</p> <p>22 A. No.</p> <p>23 Q. Did he tell you why?</p> <p>24 A. No.</p> <p>25 Q. Did you, prior to January 1, 2021, did you</p>
<p style="text-align: right;">70</p> <p>1 NexPoint Advisors, LP?</p> <p>2 A. No.</p> <p>3 Q. Were you ever the controller or assistant</p> <p>4 controller for NexPoint Advisors LP?</p> <p>5 A. No.</p> <p>6 Q. Did you ever at any point in time have any</p> <p>7 employment, officer or any title or role at HCMFA?</p> <p>8 A. No.</p> <p>9 Q. Were you ever the controller or assistant</p> <p>10 controller of HCMFA?</p> <p>11 A. No.</p> <p>12 Q. So you might have indirectly provided</p> <p>13 services to those two as part of shared services, but</p> <p>14 never directly; is that fair?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: When you say never directly,</p> <p>18 meaning I was not employed by those entities?</p> <p>19 Q. (BY MR. RUKAVINA) Correct.</p> <p>20 A. That's correct.</p> <p>21 Q. Do you have any understanding -- first of</p> <p>22 all, NexPoint did not make a payment on December 31,</p> <p>23 2020; correct?</p> <p>24 A. Correct.</p> <p>25 Q. Okay. Do you have any understanding of why</p>	<p style="text-align: right;">72</p> <p>1 hear from anyone as to why Mr. Waterhouse gave that</p> <p>2 instruction?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Did you, after that November 30 or December 1</p> <p>5 phone call, did you follow up with him or anyone else</p> <p>6 about the upcoming note payment?</p> <p>7 A. I didn't have any reason to.</p> <p>8 Q. I'm going to -- let me find you a document</p> <p>9 for a moment.</p> <p>10 Just so the record is complete, let's include</p> <p>11 this promissory note. It's going to be Exhibit 13.</p> <p>12 This is the NexPoint promissory note.</p> <p>13 (Whereupon, Exhibit 13 was marked for</p> <p>14 identification.)</p> <p>15 Q. (BY MR. RUKAVINA) I take it you've seen this</p> <p>16 promissory note, Exhibit 13?</p> <p>17 A. Yes.</p> <p>18 Q. And I think you testified about this before,</p> <p>19 but just to summarize to save time.</p> <p>20 This would have been a note that you would</p> <p>21 not have papered but would have gone through legal</p> <p>22 because it was a roll-up. Is that generally accurate?</p> <p>23 A. Yes.</p> <p>24 Q. And do you have any memory at all of having</p> <p>25 anything to do with papering up this loan?</p>



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<p style="text-align: right;">73</p> <p>1 A. Not that I recall.</p> <p>2 Q. Would you have had, after 2017 and before</p> <p>3 2021, any role with respect to any payments or upcoming</p> <p>4 payments on this note, any role at all?</p> <p>5 A. Yes.</p> <p>6 Q. What would have been your role or roles?</p> <p>7 A. That would have been taking direction from</p> <p>8 Frank Waterhouse or possibly Jim Dondero saying, go</p> <p>9 ahead and make these payments that are due on these</p> <p>10 term notes.</p> <p>11 Q. Would you have recorded on any books or</p> <p>12 records payments that actually were made?</p> <p>13 A. Not me personally.</p> <p>14 Q. Who would have?</p> <p>15 A. Our accountant, which could have been one of</p> <p>16 two different people, depending on the time frame.</p> <p>17 Q. Would you have had any role with respect to</p> <p>18 recording those payments or is that just something that</p> <p>19 your group would have done?</p> <p>20 MR. MORRIS: Objection to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: I would not have had a role.</p> <p>23 My group would have.</p> <p>24 Q. (BY MR. RUKAVINA) What about calculating</p> <p>25 amortization and/or interest payments that are due or</p>	<p style="text-align: right;">75</p> <p>1 A. At my house.</p> <p>2 Q. Did you answer on a cell phone or landline?</p> <p>3 A. My cell phone.</p> <p>4 Q. Is there any chance in hell that your cell</p> <p>5 phone would still have a record of that phone call,</p> <p>6 like what time it was and how long it lasted?</p> <p>7 MR. MORRIS: Objection to the form of the</p> <p>8 question.</p> <p>9 Q. (BY MR. RUKAVINA) I apologize for using</p> <p>10 hell.</p> <p>11 MR. MORRIS: And to foundation.</p> <p>12 THE WITNESS: I have no idea.</p> <p>13 Q. (BY MR. RUKAVINA) Do you have your cell</p> <p>14 phone with you right now?</p> <p>15 A. In the other room.</p> <p>16 Q. I might ask you during the break to just --</p> <p>17 we'll take a short break before I'm done, and I'll ask</p> <p>18 you if you've had a chance to look for November and</p> <p>19 December 2020 phone logs between you and</p> <p>20 Mr. Waterhouse. I would ask you to do that, please.</p> <p>21 A. Sure.</p> <p>22 Q. And I apologize, I think you said you thought</p> <p>23 it was a short telephone call?</p> <p>24 A. I have no idea.</p> <p>25 Q. Did the telephone call or Mr. Waterhouse's</p>
<p style="text-align: right;">74</p> <p>1 upcoming? Who would have done that, you or someone</p> <p>2 else?</p> <p>3 A. Our accountant.</p> <p>4 Q. Do you have any memory of doing that?</p> <p>5 MR. MORRIS: Objection to the form of the</p> <p>6 question.</p> <p>7 THE WITNESS: Not during 2017 through 2019.</p> <p>8 Q. (BY MR. RUKAVINA) What about 2020?</p> <p>9 A. No.</p> <p>10 Q. Going back to that November 30 or December 1</p> <p>11 telephone call, do you recall who initiated the call?</p> <p>12 A. To me?</p> <p>13 Q. The one between you and Mr. Waterhouse.</p> <p>14 A. Frank called me.</p> <p>15 Q. Frank called you.</p> <p>16 And was it just to discuss -- or just to give</p> <p>17 you that instruction, no payments from the Advisors, or</p> <p>18 was there other things discussed?</p> <p>19 A. I could not tell you if something else was</p> <p>20 discussed on that phone call.</p> <p>21 Q. Do you remember if it was a long phone call</p> <p>22 or short?</p> <p>23 A. Couldn't tell you.</p> <p>24 Q. Do you remember where you were when he called</p> <p>25 you?</p>	<p style="text-align: right;">76</p> <p>1 instructions surprise you in any way?</p> <p>2 A. Nothing surprises me anymore, so no.</p> <p>3 Q. Did it surprise you back in November or</p> <p>4 December of 2020?</p> <p>5 A. No.</p> <p>6 Q. Did it pique your curiosity?</p> <p>7 A. Nope.</p> <p>8 Q. Just another instruction from your boss?</p> <p>9 A. Yep.</p> <p>10 Q. Exhibit 14 is going to be a document that</p> <p>11 we're not sure what it is and we're not sure who</p> <p>12 prepared it. It appears to be a ledger of charges</p> <p>13 against and payments on this promissory note.</p> <p>14 I'm just saying that so the people on the</p> <p>15 phone know what it is, but you don't have to take what</p> <p>16 I said as correct.</p> <p>17 (Whereupon, Exhibit 14 was marked for</p> <p>18 identification.)</p> <p>19 Q. (BY MR. RUKAVINA) So Ms. Hendrix, Exhibit 14</p> <p>20 was produced by the debtor. And I'm going to ask you,</p> <p>21 do you know what this is or have you seen it before?</p> <p>22 Can you help us state what it is?</p> <p>23 A. This looks like it is an amortization</p> <p>24 schedule of the NexPoint Advisors term loan.</p> <p>25 Q. Would this have been something that it</p>



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<p style="text-align: right;">77</p> <p>1 appears to you would have been maintained internally by</p> <p>2 the debtor, or does it look like it might have been</p> <p>3 prepared by DSI or someone else for some other reason?</p> <p>4 A. It looks like the debtor's amortization</p> <p>5 schedule that they kept.</p> <p>6 Q. Did the debtor keep an amortization schedule</p> <p>7 for the NexPoint promissory note, to your knowledge?</p> <p>8 A. Yes.</p> <p>9 Q. Did the debtor keep amortization schedules</p> <p>10 for other term promissory notes?</p> <p>11 A. Yes.</p> <p>12 Q. In what format, like Excel spreadsheets or</p> <p>13 Word documents? What is your recollection for NexPoint</p> <p>14 specifically?</p> <p>15 A. Excel.</p> <p>16 Q. Would that have been on the shared system or</p> <p>17 something?</p> <p>18 A. Yes.</p> <p>19 Q. And who would have been responsible on an</p> <p>20 ongoing basis to update the NexPoint amortization</p> <p>21 schedule?</p> <p>22 MR. MORRIS: Objection to the form of the</p> <p>23 question.</p> <p>24 THE WITNESS: Depends on what time you're</p> <p>25 asking.</p>	<p style="text-align: right;">79</p> <p>1 change but it doesn't use brackets?</p> <p>2 A. It's a negative number. It's just a</p> <p>3 formatting issue.</p> <p>4 Q. What about also on that same page in the</p> <p>5 other column, principal paid, 5/31/2020, it's a</p> <p>6 positive number, 575,550.</p> <p>7 MR. MORRIS: Where are you?</p> <p>8 MR. RUKAVINA: On page 2 of this exhibit.</p> <p>9 MR. MORRIS: What date?</p> <p>10 MR. RUKAVINA: May 31, 2020. And it's the</p> <p>11 column over, principal paid. It's a positive number,</p> <p>12 575,000 and change.</p> <p>13 MR. MORRIS: Got it, thank you.</p> <p>14 Q. (BY MR. RUKAVINA) Do you see that,</p> <p>15 Ms. Hendrix?</p> <p>16 A. Yes.</p> <p>17 Q. Do you have an understanding of why that</p> <p>18 number would be positive?</p> <p>19 A. Actually, I think this looks like an entry to</p> <p>20 me where the interest is what we call picking. So on</p> <p>21 the anniversary date of this loan, which is May, from</p> <p>22 what I can tell, the accrued interest total, which is</p> <p>23 that 575-, is being rolled into principal.</p> <p>24 That's what I can tell from looking at it.</p> <p>25 Q. Okay. Do you have any understanding as to</p>
<p style="text-align: right;">78</p> <p>1 Q. (BY MR. RUKAVINA) Let's talk about the year</p> <p>2 of 2020.</p> <p>3 A. That would have been Hayley Eliason, our</p> <p>4 accountant at that time.</p> <p>5 Q. What about the year 2019?</p> <p>6 A. Still Hayley.</p> <p>7 MR. RUKAVINA: I'm going to just ask, to</p> <p>8 preserve the record, Mr. Morris, if he hasn't already,</p> <p>9 to produce any such Excel spreadsheet in the native</p> <p>10 form.</p> <p>11 Q. (BY MR. RUKAVINA) If we look at this,</p> <p>12 Ms. Hendrix -- and I'm a little confused as to what</p> <p>13 these entries mean. Maybe you could help me. But</p> <p>14 columns that say interest paid, principal paid, total</p> <p>15 paid, do you know what those columns mean?</p> <p>16 A. Exactly as they state. These are interest</p> <p>17 and principal payments made on the date that's listed,</p> <p>18 and then you've got a total.</p> <p>19 Q. And then they're in brackets because they're</p> <p>20 negative numbers?</p> <p>21 A. Correct.</p> <p>22 Q. So here's what I'm not understanding. Go to</p> <p>23 the second page.</p> <p>24 You see there's an entry under interest paid</p> <p>25 12/30/29 [verbatim] that says negative 530,000 and</p>	<p style="text-align: right;">80</p> <p>1 why that would have been done or why that would have</p> <p>2 been done on that day?</p> <p>3 MR. MORRIS: Objection to the form of the</p> <p>4 question.</p> <p>5 THE WITNESS: Because that's the anniversary</p> <p>6 date of the loan. I would assume that that's how the</p> <p>7 loan is written.</p> <p>8 Q. (BY MR. RUKAVINA) And I think that that</p> <p>9 Section 1 of the promissory note does say, the unpaid</p> <p>10 principal balance of this note from time to time</p> <p>11 outstanding shall bear interest.</p> <p>12 At the rate of 6 percent per annum from the</p> <p>13 date hereof until maturity date, compounded annually on</p> <p>14 the anniversary of the date of this note.</p> <p>15 Do you see that?</p> <p>16 MR. MORRIS: Objection to the form of the</p> <p>17 question.</p> <p>18 THE WITNESS: Yeah, I see that.</p> <p>19 Q. (BY MR. RUKAVINA) Assuming that this is the</p> <p>20 correct amortization schedule for the NexPoint note,</p> <p>21 and that the numbers in here are correct, if you look</p> <p>22 at the second page under the column total paid there</p> <p>23 are a number of entries for 2019.</p> <p>24 Do you see that, the far right column?</p> <p>25 A. At the top, yes.</p>

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<p style="text-align: right;">81</p> <p>1 Q. For example, 1.3 million, 2.1 million, 2 1.3 million. 3 Do you see that? 4 A. Yes. 5 Q. Assuming that that's correct, do you have any 6 memory or understanding whether in the year 2019, or 7 why NexPoint was making these payments on this 8 promissory note? 9 A. Without going back and reading through emails 10 I can only assume that, from looking at this, Highland, 11 the debtor, would have needed cash, and so this is one 12 way of getting cash to the debtor. 13 Q. This is kind of like what we discussed in the 14 beginning, that Mr. Dondero on a cash needed basis 15 would just transfer money between entities? 16 A. Yes. 17 Q. Do you have any memory in the first half of 18 2019 whether Highland, the debtor, had any particular 19 need for cash money at that time? 20 A. We generally always had a need for cash, so 21 yes. 22 Q. And so if NexPoint was transferring money 23 back to Highland on this note because Highland needed 24 the money, would those have been recorded as 25 prepayments by the debtor?</p>	<p style="text-align: right;">83</p> <p>1 Exhibit 15 and I'm going to represent to you that it's 2 the email that Mr. Morris sent to me today and I've not 3 doctored it in any way. 4 (Whereupon, Exhibit 15 was marked for 5 identification.) 6 MR. MORRIS: Do you have the email that it 7 was attached to? 8 MR. RUKAVINA: Somewhere. I can find it at a 9 break. 10 MR. MORRIS: I'll let the witness testify. 11 This was attached to an email. Not my email, but 12 another email. But I'll let the witness testify. 13 MR. RUKAVINA: Off the record. 14 (Off the record.) 15 Q. (BY MR. RUKAVINA) So you have Exhibit 15. 16 And during the break we established, I don't 17 have a copy of it right now, but you sent Exhibit 15 on 18 August 29, 2020, to Mr. Dondero by email, copying 19 Mr. Waterhouse, as well as a couple of other 20 attachments; is that correct? 21 A. Correct. 22 Q. Do you recall what prompted you to send that 23 email and this attachment? 24 A. Yes. 25 Q. What?</p>
<p style="text-align: right;">82</p> <p>1 MR. MORRIS: Objection to the form of the 2 question. 3 THE WITNESS: Yes. 4 Q. (BY MR. RUKAVINA) Sitting here today, do you 5 have any reason to believe based on the formatting or 6 anything on Exhibit 14 that it's not the amortization 7 schedule as it was maintained by the debtor? 8 A. I don't have any reason to not believe that 9 it was. 10 Q. Going to show you a few documents that I'm 11 hopefully going to burn through, but you're certainly 12 entitled to take all the time that you need. 13 So first is going to be a document that 14 Mr. Morris produced this morning. It's not Bates 15 labeled. I don't know why. 16 MR. MORRIS: As I said in my email, my 17 paralegal is sick and so I wanted you to have the 18 documents. We'll Bates stamp them later, but we have a 19 written record from my email of what we produced to 20 you. 21 MR. RUKAVINA: You're assuming that I read my 22 emails. 23 MR. MORRIS: Sorry about that. I confess, 24 sometimes I don't as well. 25 Q. (BY MR. RUKAVINA) So I'm going to hand you</p>	<p style="text-align: right;">84</p> <p>1 A. Frank Waterhouse called me on August 29, and 2 requested that I do so. 3 Q. Did he tell you why? 4 A. From what I recall, this was a time when Jim 5 was trying to come up with his bargain or pop land, 6 whatever he referenced it as. This was all information 7 that Frank said he wanted. 8 Q. Okay. So going back to Exhibit 15, what I'm 9 interested in is NexPoint Advisors, the 23,846,000 and 10 change number. 11 Do you see that? 12 A. Yes. 13 Q. Where did that number -- or where did this 14 Exhibit 15 come from, if you understand my question? 15 A. Sure. These numbers should all be balances 16 off of the corresponding notes that each entity owed to 17 the debtor. 18 Q. Did you or someone prepare Exhibit 15 19 specifically for that email? Or was Exhibit 15 already 20 existing somewhere on the system? 21 A. I believe that we prepared it specifically 22 for this request. 23 Q. Do you recall who? 24 A. It was either myself or our accountant. I 25 don't recall who put it together.</p>

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<p style="text-align: right;">85</p> <p>1 Q. Okay. And where would that 23 million and 2 change number for NexPoint have come from, an 3 amortization schedule? 4 A. Yes. 5 Q. And what about Highland Capital Management 6 Fund Advisors? You see \$10.5 million and change demand 7 on Exhibit 15? 8 A. Yes. 9 Q. Where would that \$10.5 million number have 10 come from, do you remember? 11 A. The same. It would have come off of the 12 amortization schedules for all of their notes. 13 Q. How was there an amortization schedule for a 14 demand note? 15 A. Because it's accruing interest. 16 Q. So sitting here today, you expect there would 17 be some amortization schedule like Exhibit 14 but for 18 HCMFA? 19 A. Yes. 20 Q. Now we're going to have an exhibit [verbatim] 21 chain that's going to be marked as Exhibit 16. 22 (Whereupon, Exhibit 16 was marked for 23 identification.) 24 MR. RUKAVINA: For the folks on the video, 25 Exhibit 16 is the email chain that Mr. Morris used last</p>	<p style="text-align: right;">87</p> <p>1 Do you see that, ma'am? 2 A. Yes. 3 Q. 23 million 683? 4 A. Yes. 5 Q. And you see, HCMFA due to HCMLP as of 6 June 30, 2020, 12,286,000? 7 MR. MORRIS: Objection to the form of the 8 question. 9 Q. (BY MR. RUKAVINA) Strike that. 10 It says 12,286. What do you take that 12,286 11 to mean? 12 A. I think that's a typo and it should have 13 said -- well, there's several things wrong with this, 14 from looking at it. 15 She left off three zeros on the end of it. 16 Should have said 12,286,000. Secondly, that amount is 17 our due to affiliates on HCMFA's books, not just due to 18 HCMLP. 19 Q. That was going to be my question, why that 20 12,286,000 number didn't jive with the 10,530,000 21 number on Exhibit 15? 22 A. Yes, there's another loan due to a different 23 affiliate. 24 Q. So that \$12,286,000 amount doesn't mean that 25 it's all due to Highland; is that correct?</p>
<p style="text-align: right;">86</p> <p>1 week regarding the Section 15(c) document. 2 Q. (BY MR. RUKAVINA) Are you familiar with this 3 Exhibit 16 email chain, Ms. Hendrix? 4 A. Yes. 5 Q. Why are you familiar with it? 6 A. Well, I'm copied on it, and I saw it 7 yesterday. 8 Q. Do you have any memory -- well, that's a 9 stupid question. But prior to yesterday, did you have 10 any memory of this? 11 A. Yes. 12 Q. And do you recall the context or the purpose 13 of this exhibit, or this email chain? 14 A. From what I remember this is the time where 15 information was being prepared for the retail board to 16 re-up the debtor's shared services. 17 Q. So, here -- you're certainly welcome to read 18 it in its entirety and if you feel like you want to or 19 need to, that's fine. But I only have one question. 20 Well, one question with two subparts. 21 I'm looking at Ms. Lauren Thedford's, 22 T-h-e-d-f-o-r-d's, email October 6, 2000 [verbatim] 23 where she says, I see the below from the 6/30 24 financials. NPA, due to HCMLP and affiliates as of 25 June 30, 2020.</p>	<p style="text-align: right;">88</p> <p>1 A. Correct. 2 Q. Exhibit 17 is going to be the January 7, 2021 3 notice from the debtor to NexPoint about the default. 4 (Whereupon, Exhibit 17 was marked for 5 identification.) 6 Q. (BY MR. RUKAVINA) You've been handed 7 Exhibit 17. Have you seen this document before? 8 A. Not that I believe. 9 Q. And I think we've asked this before, but just 10 to clarify. 11 Did anyone at the debtor, including Mr. Seery 12 or DSI, discuss with you after December 31, 2020 that 13 the payment had not been made and what, if anything, 14 the debtor should do about that? 15 MR. MORRIS: Objection to the form of the 16 question. 17 THE WITNESS: I can't recall specific 18 conversations that may or may not have been had around 19 that topic. 20 Q. (BY MR. RUKAVINA) Would -- so back then you 21 were the assistant controller, on January 7; right? 22 A. Yes. 23 Q. Do you think that back then Mr. Seery or DSI 24 would have sought your advice or input as to what they 25 should do about the missed payment?</p>

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<p style="text-align: right;">89</p> <p>1 A. No.</p> <p>2 MR. MORRIS: Objection to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: No.</p> <p>5 Q. (BY MR. RUKAVINA) That would have been</p> <p>6 outside of your purview?</p> <p>7 A. Yes.</p> <p>8 Q. And you see in this notice in the middle, it</p> <p>9 says an amount due as of January 8 in the \$24,471,000</p> <p>10 range.</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any idea, I take it you don't,</p> <p>14 where that number came from?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: I don't know who provided that</p> <p>18 number or where it came from.</p> <p>19 Q. (BY MR. RUKAVINA) Do you have any</p> <p>20 understanding as to why that number is higher than the</p> <p>21 number on Exhibit 15?</p> <p>22 A. My guess would be that Exhibit 15 is just</p> <p>23 principal balances.</p> <p>24 Q. Okay.</p> <p>25 Exhibit 18, please.</p>	<p style="text-align: right;">91</p> <p>1 Q. Were you aware of it then?</p> <p>2 A. Was I aware of what?</p> <p>3 Q. That transfer of \$1.4 million and change.</p> <p>4 A. On January 14?</p> <p>5 Q. Yes.</p> <p>6 A. Yes.</p> <p>7 Q. Did you facilitate that transfer?</p> <p>8 A. Yes.</p> <p>9 Q. Who told you to make that transfer?</p> <p>10 A. Frank Waterhouse.</p> <p>11 Q. Did he tell you why?</p> <p>12 A. Nope.</p> <p>13 Q. He just said make the transfer?</p> <p>14 A. Yes.</p> <p>15 Q. Did he tell you that it was on account of the</p> <p>16 NexPoint note?</p> <p>17 A. Yes.</p> <p>18 Q. Did he tell you how to, if at all, to credit</p> <p>19 that note for that amount?</p> <p>20 A. No.</p> <p>21 Q. Sitting here today, you have no memory other</p> <p>22 than that Frank Waterhouse told you to transfer some</p> <p>23 \$1.4 million on the NexPoint note?</p> <p>24 A. Right.</p> <p>25 Q. And do you recall, was that oral or written</p>
<p style="text-align: right;">90</p> <p>1 (Whereupon, Exhibit 18 was marked for</p> <p>2 identification.)</p> <p>3 Q. (BY MR. RUKAVINA) Exhibit 18, Ms. Hendrix,</p> <p>4 is an email chain between you and Mr. Waterhouse on</p> <p>5 January 12, 2021. Do you remember this email chain?</p> <p>6 A. No.</p> <p>7 Q. Do you remember on January 12 Mr. Waterhouse</p> <p>8 emailing you, asking when the last amort payment due</p> <p>9 and what the amount was for NexPoint?</p> <p>10 A. No.</p> <p>11 Q. When was the last time -- well, strike that.</p> <p>12 Do you remember ever seeing this email</p> <p>13 between then and today?</p> <p>14 A. No.</p> <p>15 Q. Do you have any present memory of any</p> <p>16 communications with Mr. Waterhouse on or about</p> <p>17 January 12, 2021 regarding the NexPoint default or</p> <p>18 note?</p> <p>19 A. Not specific, no.</p> <p>20 Q. Any general memory?</p> <p>21 A. Not that I can pinpoint, no.</p> <p>22 Q. Were you aware that on or about January 14</p> <p>23 NexPoint transferred about \$1.4 million and change to</p> <p>24 the debtor?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">92</p> <p>1 or how would that have been?</p> <p>2 A. That was a phone call.</p> <p>3 Q. Do you recall who initiated the phone call?</p> <p>4 A. Frank called me.</p> <p>5 Q. Was that the only topic discussed in that</p> <p>6 phone call to your memory?</p> <p>7 A. Yes.</p> <p>8 Q. Did you ask him why the payment or</p> <p>9 anything -- did you ask him anything at all?</p> <p>10 A. No.</p> <p>11 Q. And after you made the payment -- or I'm</p> <p>12 sorry, after you caused the payment to be made, did you</p> <p>13 take any further steps with respect to the NexPoint</p> <p>14 note?</p> <p>15 A. I forwarded the payment confirmation, showing</p> <p>16 that the money was sent from NexPoint Advisors to</p> <p>17 Highland, forwarded that payment confirmation from the</p> <p>18 bank to Jack Donohue at DSI, letting him know.</p> <p>19 Q. Did you let Mr. Donohue or anyone at DSI know</p> <p>20 about the transfer before the transfer was made?</p> <p>21 A. No.</p> <p>22 Q. And you sent that by email to Mr. Donohue?</p> <p>23 A. Yes.</p> <p>24 Q. Did Mr. Donohue thereafter have any</p> <p>25 discussion with you about that in any way?</p>

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<p style="text-align: right;">93</p> <p>1 A. I have no idea.</p> <p>2 Q. He didn't ask what this was for or anything</p> <p>3 like that?</p> <p>4 A. He may have asked what the amount</p> <p>5 represented. I can't specifically recall. But it's</p> <p>6 possible.</p> <p>7 Q. Okay. Do you recall any discussion about</p> <p>8 that time, January 14, with Mr. Donohue or</p> <p>9 Mr. Waterhouse or anyone as to whether that payment</p> <p>10 would in any way relieve NexPoint of the default or</p> <p>11 would not relieve NexPoint of the default?</p> <p>12 A. No.</p> <p>13 Q. Ms. Hendrix, I believe that I am done. I</p> <p>14 would like you, however, because it's important, to</p> <p>15 check your phone. Would you like a short, five-minute</p> <p>16 restroom break and just check --</p> <p>17 A. Yeah, and I might need help figuring out how</p> <p>18 to do that.</p> <p>19 Q. I'm not saying that it's possible, but I'm</p> <p>20 going to ask you on the record to look for that</p> <p>21 November 30 or December 1, 2020 phone call.</p> <p>22 MR. MORRIS: We're happy to do that.</p> <p>23 Q. (BY MR. RUKAVINA) But what I would like if</p> <p>24 you find it, I would like you to tell me the time, the</p> <p>25 date and the length of that call.</p>	<p style="text-align: right;">95</p> <p>1 proceedings today.</p> <p>2 I'm going to try to ask you some questions</p> <p>3 about these adversary proceedings. I'll try to make it</p> <p>4 as quick as possible so we don't keep you here.</p> <p>5 You understand that you're still under oath;</p> <p>6 is that correct?</p> <p>7 A. Correct.</p> <p>8 Q. First topic I want to ask you about is one of</p> <p>9 the defenses in this case related to an oral agreement.</p> <p>10 Let me start off with this question.</p> <p>11 Are you aware that some of the defendants in</p> <p>12 these adversary proceedings have raised a defense that</p> <p>13 there was a subsequent oral agreement allowing the</p> <p>14 notes at issue to be potentially forgiven if certain</p> <p>15 events occurred?</p> <p>16 A. I've recently been made aware that this came</p> <p>17 up, yes.</p> <p>18 Q. When you say recently, approximately when?</p> <p>19 A. Within the last week.</p> <p>20 Q. And where did you learn that from?</p> <p>21 A. In my speakings with John Morris just</p> <p>22 preparing for today.</p> <p>23 MR. AIGEN: And John, I'm going to assume</p> <p>24 that those conversations are privileged?</p> <p>25 MR. MORRIS: That's a very fair assumption.</p>
<p style="text-align: right;">94</p> <p>1 A. Okay.</p> <p>2 Q. Thank you.</p> <p>3 We'll be back in five minutes.</p> <p>4 (Off the record.)</p> <p>5 Q. (BY MR. RUKAVINA) Ms. Hendrix, during the</p> <p>6 break did you look at your phone?</p> <p>7 A. I did.</p> <p>8 Q. Did you find anything?</p> <p>9 A. Sadly, it only goes back to October 5 of</p> <p>10 2021.</p> <p>11 Q. Not surprised. Thank you.</p> <p>12 Have I been courteous to you today?</p> <p>13 A. Yes.</p> <p>14 MR. RUKAVINA: I pass the witness.</p> <p>15 MR. MORRIS: Thank you.</p> <p>16 MR. AIGEN: Are we ready to move forward?</p> <p>17 MR. MORRIS: Yes. You're a little dark</p> <p>18 there.</p> <p>19 MR. RUKAVINA: Can we increase the volume on</p> <p>20 that thing?</p> <p>21 (Off the record.)</p> <p>22 EXAMINATION</p> <p>23 Q. (BY MR. AIGEN) Good afternoon, Ms. Hendrix.</p> <p>24 My name is Michael Aigen. I represent Mr. Dondero,</p> <p>25 HCMS and HCRE Partners in several of the adversary</p>	<p style="text-align: right;">96</p> <p>1 Q. (BY MR. AIGEN) Other than the conversation</p> <p>2 you just referred to with Mr. Morris, have you ever had</p> <p>3 any other conversations with anyone about this alleged</p> <p>4 oral agreement that Defendants are contending occurred?</p> <p>5 A. No.</p> <p>6 Q. So prior to that conversation with Mr. Morris</p> <p>7 you weren't even aware of this alleged defense related</p> <p>8 to an oral agreement. Is that fair to say?</p> <p>9 A. That's right.</p> <p>10 Q. This is a similar question but slightly</p> <p>11 different, just to sort of finish this topic. I'm not</p> <p>12 asking about this oral agreement as a defense, I'm just</p> <p>13 asking more generally.</p> <p>14 Other than this conversation, were you aware</p> <p>15 generally of any conversations that anyone had where</p> <p>16 the notes at issue might be forgiven if certain events</p> <p>17 occurred?</p> <p>18 MR. MORRIS: Objection to the form of the</p> <p>19 question.</p> <p>20 THE WITNESS: No.</p> <p>21 Q. (BY MR. AIGEN) Is it fair to say that you</p> <p>22 haven't had any conversations about this subsequent</p> <p>23 oral agreement with anyone other than Mr. Morris?</p> <p>24 A. That's fair.</p> <p>25 Q. You never discussed it with Mr. Seery?</p>



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<p style="text-align: right;">97</p> <p>1 A. No.</p> <p>2 Q. Never discussed it with Mr. Klos?</p> <p>3 A. No. Well, sorry, Mr. Klos was present when</p> <p>4 John and I talked about it. But that's it.</p> <p>5 Q. Have you ever made any investigation or</p> <p>6 effort in order to determine if this oral agreement</p> <p>7 actually occurred?</p> <p>8 A. No.</p> <p>9 Q. If there was such an oral agreement to</p> <p>10 potentially forgive the notes, do you believe that you</p> <p>11 would have known about such an oral agreement as part</p> <p>12 of your duties and responsibilities?</p> <p>13 A. Yes, I would hope so.</p> <p>14 Q. Why do you say that?</p> <p>15 A. That's something that should be disclosed in</p> <p>16 audited financial statements, and me and my team are</p> <p>17 responsible for preparing those financial statements</p> <p>18 and presenting them to the auditors as fair and</p> <p>19 accurate.</p> <p>20 Q. And is it fair to say that this oral</p> <p>21 agreement should have been disclosed to PwC if it was</p> <p>22 determined that it was material?</p> <p>23 A. Yes.</p> <p>24 Q. And have you done any sort of analysis to</p> <p>25 determine whether the oral agreement at issue here</p>	<p style="text-align: right;">99</p> <p>1 A. Yes.</p> <p>2 Q. Can you tell me why?</p> <p>3 A. Sure. It goes along with the same statement</p> <p>4 as HCMFA and NPA and the phone call that I got from</p> <p>5 Frank Waterhouse saying there's no payments coming from</p> <p>6 any of the affiliates to the debtor.</p> <p>7 Q. I may have written that down wrong when you</p> <p>8 talked about that before, but I believe your earlier</p> <p>9 testimony when you described that conversation was that</p> <p>10 there was no more payments coming from the Advisors,</p> <p>11 not affiliates.</p> <p>12 Let me ask you then, what was the</p> <p>13 conversation? Was it no more payments from affiliates</p> <p>14 or Advisors?</p> <p>15 A. It could have been either. I probably did</p> <p>16 say Advisors. But regardless, those payments would</p> <p>17 have been directed to me to be made, either by Frank</p> <p>18 Waterhouse or Jim Dondero.</p> <p>19 And I would assume that nobody directed me to</p> <p>20 make those payments because we weren't making any</p> <p>21 payments from Jim's related parties. I don't know for</p> <p>22 a fact, but that's what I would assume. Those were all</p> <p>23 under the same umbrella.</p> <p>24 Q. And again, let's back up a second.</p> <p>25 When you refer to Advisors, fair to say that</p>
<p style="text-align: right;">98</p> <p>1 would have been material for purposes of a PwC audit?</p> <p>2 A. I've not done any work, just finding out</p> <p>3 about it, but from what it sounds like, it would be</p> <p>4 material.</p> <p>5 Q. That's your opinion, that it would have been</p> <p>6 material; is that fair to say?</p> <p>7 A. Fair.</p> <p>8 Q. Have you had any discussions with anyone else</p> <p>9 about whether the oral agreement would have been</p> <p>10 material?</p> <p>11 A. No.</p> <p>12 Q. Changing topics a little bit here, are you</p> <p>13 aware --</p> <p>14 (Off the record.)</p> <p>15 Q. (BY MR. AIGEN) Are you aware that a few of</p> <p>16 the loans at issue here, specifically related to HCMS</p> <p>17 and HCRE, were term loans as opposed to demand loans?</p> <p>18 A. Yes.</p> <p>19 Q. And are you aware that for those particular</p> <p>20 loans, there were payments that were supposed to be</p> <p>21 made but weren't on December 31, 2020?</p> <p>22 A. Yes.</p> <p>23 Q. Do you have any understanding as to why those</p> <p>24 payments weren't made with respect to the HCMS and HCRE</p> <p>25 term loans on December 31, 2020?</p>	<p style="text-align: right;">100</p> <p>1 that does not include HCMS and HCRE; is that correct?</p> <p>2 A. When I say Advisors, I am referring to HCMFA</p> <p>3 and NPA.</p> <p>4 Q. And when you use the term "affiliates,"</p> <p>5 you're referring to all four; is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. Just want to make sure we're on the same</p> <p>8 page.</p> <p>9 When you answered the previous question you</p> <p>10 started to get into assumptions and things like that.</p> <p>11 Let me start off with what your specific recollection</p> <p>12 of that phone call was. Tell me as best as you can</p> <p>13 what you remember Frank telling you?</p> <p>14 A. I remember it as being no payments from the</p> <p>15 Advisors to the debtor.</p> <p>16 Q. So you don't remember the instruction being,</p> <p>17 don't make payments from the affiliates. It was, don't</p> <p>18 make payments from the Advisors; is that correct?</p> <p>19 A. Correct.</p> <p>20 Q. So is it fair to say that you don't remember</p> <p>21 any instructions telling you not to make any payments</p> <p>22 from HCMS or HCRE?</p> <p>23 A. That's fair.</p> <p>24 Q. So if that is the case, why weren't payments</p> <p>25 made from HCMS or HCRE for December 31, 2020, payment?</p>



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<p style="text-align: right;">101</p> <p>1 A. Sure. Typically what would have happened is</p> <p>2 Frank would be talking to Jim Dondero about making</p> <p>3 these payments and getting his approval to do so,</p> <p>4 because Jim Dondero is, you know, directing payments</p> <p>5 out of these entities.</p> <p>6 I have never -- had never been given the</p> <p>7 direction to effectuate those payments by anybody.</p> <p>8 Q. Is it fair to say, then, that you're not</p> <p>9 aware of any instructions from anyone saying that the</p> <p>10 HCMS and HCRE payments should not be made on</p> <p>11 December 31, 2020?</p> <p>12 A. That's fair.</p> <p>13 Q. So the reason the payments weren't made is</p> <p>14 because you never got an affirmative instruction to</p> <p>15 actually make that payment; is that correct?</p> <p>16 A. Correct.</p> <p>17 Q. And you're not aware of Mr. Dondero</p> <p>18 instructing anyone that HCMS and HCRE should not have</p> <p>19 made the December 31, 2020, payments; is that correct?</p> <p>20 A. I'm not aware personally, no. Correct.</p> <p>21 Q. You say personally. In any way are you aware</p> <p>22 of such a specific instruction?</p> <p>23 A. No.</p> <p>24 Q. If that payment was to be made, who at the</p> <p>25 debtor would have been responsible for making those</p>	<p style="text-align: right;">103</p> <p>1 Q. And is that because it's only your job to</p> <p>2 make payments that you're told to specifically make; is</p> <p>3 that correct?</p> <p>4 A. Yes, in this case, that is correct.</p> <p>5 Q. Is it fair to say then that as part of your</p> <p>6 job responsibilities you've never made a payment to</p> <p>7 anyone without being specifically told by Mr. Dondero</p> <p>8 and Mr. Waterhouse?</p> <p>9 A. Sorry, say that again.</p> <p>10 Q. As part of your job responsibilities, have</p> <p>11 you ever made a payment to anyone without the specific</p> <p>12 instruction of Mr. Waterhouse or Mr. Dondero?</p> <p>13 MR. MORRIS: Objection to the form of the</p> <p>14 question.</p> <p>15 THE WITNESS: Yes, we make payments all the</p> <p>16 time.</p> <p>17 Q. (BY MR. AIGEN) So why is this different in</p> <p>18 that this payment was not made without the specific</p> <p>19 instructions from Mr. Waterhouse and Mr. Dondero, even</p> <p>20 though you believed the payment was due on December 31,</p> <p>21 2020?</p> <p>22 A. The difference between making a loan payment</p> <p>23 and making normal course -- or sorry, normal, ordinary</p> <p>24 course, you know, overhead expense payments is that</p> <p>25 something like that is not necessarily what we would</p>
<p style="text-align: right;">102</p> <p>1 payments on behalf of HCMS and HCRE?</p> <p>2 MR. MORRIS: Objection to the form of the</p> <p>3 question.</p> <p>4 THE WITNESS: The corporate accounting team.</p> <p>5 Q. (BY MR. AIGEN) And that included you?</p> <p>6 A. Yes.</p> <p>7 Q. And in December of 2020, were you aware that</p> <p>8 those payments were due on December 31, 2020?</p> <p>9 A. Yes.</p> <p>10 Q. Did you make any attempts or efforts to</p> <p>11 determine whether Mr. Dondero wanted those payments to</p> <p>12 be made?</p> <p>13 A. I did not, no.</p> <p>14 Q. Why not?</p> <p>15 A. That would have been something that Frank</p> <p>16 Waterhouse would have done directly with Jim Dondero</p> <p>17 himself.</p> <p>18 Q. Did you have any conversations with anyone</p> <p>19 about whether the December 31 payments for HCMS and</p> <p>20 HCRE would be made in December of 2020?</p> <p>21 A. Not that I can recall.</p> <p>22 Q. And you didn't think it was your</p> <p>23 responsibility to check on those payments and find out</p> <p>24 if they should have been made?</p> <p>25 A. Right, correct.</p>	<p style="text-align: right;">104</p> <p>1 take to Jim Dondero to approve.</p> <p>2 He doesn't have time to approve every single</p> <p>3 overhead payment that we're making out of every single</p> <p>4 entity. That's what Frank is for.</p> <p>5 Something that's once a year that's more</p> <p>6 material in amount, such as a loan payment, that is</p> <p>7 something that needs to get approved by Jim Dondero.</p> <p>8 Q. You say needs to get approved. What's your</p> <p>9 basis for that, something in a policy manual, something</p> <p>10 someone told you?</p> <p>11 A. It's a policy that my team followed. I don't</p> <p>12 think that it's written in an actual manual anywhere,</p> <p>13 but anything that's not ordinary course needs to get</p> <p>14 approved by Jim Dondero.</p> <p>15 Q. Is that something that's written in a policy</p> <p>16 anywhere?</p> <p>17 A. Not that I know of.</p> <p>18 Q. Were you ever told that payments in the</p> <p>19 ordinary course can be made without Mr. Dondero's</p> <p>20 approval but loan payments cannot?</p> <p>21 A. Yes, I do recall years ago that Frank and I,</p> <p>22 possibly Jim, this was years ago, had a conversation</p> <p>23 that anything ordinary course is up to Frank to</p> <p>24 approve. And this is, quite frankly, up to Frank.</p> <p>25 Whatever he felt Jim needed to sign off on,</p>

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<p style="text-align: right;">105</p> <p>1 that's what Jim would sign off on. This was not my 2 responsibility to make that decision. 3 Q. And in December -- prior to the December 31, 4 2020, due date you didn't have any conversations with 5 anyone about whether this -- these payments that were 6 due should be made; is that correct? 7 A. Correct. 8 Q. And you didn't try to check with anyone to 9 see whether anyone wanted these payments to be made; is 10 that correct? 11 A. Correct. 12 Q. Subsequent to the payment being missed, did 13 you ever have any conversations with anyone about why 14 the payment was not made? 15 A. Not that I recall. 16 Q. So is it fair to say that sitting here today 17 you have no idea why the payments were not made for 18 HCMS and HCRE on December 31, 2020? 19 MR. MORRIS: Objection to the form of the 20 question. 21 THE WITNESS: I don't have any specific 22 evidence telling me why they weren't. I can make 23 assumptions but that's not going to help. 24 Q. (BY MR. AIGEN) Well, did you ever have any 25 conversations with anyone about why those payments were</p>	<p style="text-align: right;">107</p> <p>1 A. I can't tell you the exact date, but, yes, I 2 do have a recollection of Frank calling or emailing me 3 to have, I believe it was the HCRE wire sent out for 4 their payment. 5 Q. What about the HCMS payment? 6 A. I don't recall that one as much. 7 Q. Other than the payment being made, do you 8 have any recollection of any other conversations about 9 why the payment was being made? 10 A. No. 11 Q. Are you aware of any conversations that 12 anyone had regarding whether these payments would 13 deaccelerate loans? 14 A. No. 15 Q. Is that something you would normally be part 16 of, conversations like that? 17 A. No. 18 Q. Changing topics here. Not sure if this is an 19 area that you know anything about. 20 Are you familiar with the term, as it's used 21 at Highland, NAV ratio trigger period? 22 A. No. 23 Q. This may go very quick. If I represent to 24 you that it's a term that's used in the -- in the 25 fourth amended limited partnership agreement for</p>
<p style="text-align: right;">106</p> <p>1 not made? 2 A. No. 3 Q. You have no idea why they weren't made other 4 than just speculation; is that fair to say? 5 A. Correct. 6 MR. MORRIS: Objection. Asked and answered. 7 THE WITNESS: Correct. 8 Q. (BY MR. AIGEN) And are you aware that with 9 respect to those two loans, some payments were actually 10 made in the next month, in January of 2021? 11 A. Yes. 12 Q. What role, if any, did you have with respect 13 to those payments? 14 A. Frank Waterhouse would call me and tell me to 15 have my team effectuate a wire. 16 Q. And you say would call you. Do you remember 17 this conversation or are you just assuming it occurred? 18 MR. MORRIS: Objection to the form of the 19 question. 20 THE WITNESS: If we sent a payment out, Frank 21 would have told me to do it. I would not have done it 22 on my own. 23 Q. (BY MR. AIGEN) Sitting here today, do you 24 have a specific recollection of the conversation where 25 someone told you to make the January 2021 payments?</p>	<p style="text-align: right;">108</p> <p>1 Highland Capital Management, would that refresh your 2 recollection at all? 3 A. No. 4 Q. Fair to say, then, that you have no knowledge 5 as to whether NAV ratio trigger period was ever reached 6 at any time prior to bankruptcy buyouts? 7 A. No, I don't know. 8 Q. Have you ever had any conversations with 9 Nancy Dondero? 10 A. I have not. 11 Q. Never met her? 12 A. No. I may have exchanged an email with her 13 on an invoice, but that's the extent of it. No 14 conversations. 15 Q. In the years leading up to the bankruptcy of 16 Highland Capital, was there any time period where 17 Highland was unable to pay its salaries? 18 A. Salaries? 19 Q. Salaries of its employees? 20 A. No. 21 Q. In the time leading up to the Highland 22 bankruptcy, was there any time period where Highland 23 wasn't able to pay bonuses owed to any of its 24 employees? 25 A. Not that I know of. Not that I can recall.</p>

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<p style="text-align: right;">109</p> <p>1 Q. Are you aware of any time period leading up</p> <p>2 to the Highland bankruptcy where Highland was unable to</p> <p>3 pay its bills?</p> <p>4 A. There's times where we would be in a cash</p> <p>5 flow crunch and we would stretch our AP, but eventually</p> <p>6 it would get paid.</p> <p>7 Q. And I think this is the last topic and we can</p> <p>8 probably move through this pretty quickly.</p> <p>9 Are you aware of any loans made by Highland</p> <p>10 to any of its employees or officers that were forgiven</p> <p>11 in part or all?</p> <p>12 A. Yes.</p> <p>13 Q. Which officers or employees are you aware of?</p> <p>14 A. I recall there were two employees. I can't</p> <p>15 remember one of them, but I believe another, the second</p> <p>16 one, was Paul Adkins. Again, I'm just recalling this</p> <p>17 was years ago.</p> <p>18 Q. And these two are the only ones you're aware</p> <p>19 of?</p> <p>20 A. Or I'm sorry, not Paul Adkins, Tim Lawler.</p> <p>21 It's possible Paul Adkins was the other one, but I</p> <p>22 can't tell you for sure.</p> <p>23 Q. Tim Lawler and some other employee that you</p> <p>24 can't remember the name of are the only two that you're</p> <p>25 aware of?</p>	<p style="text-align: right;">111</p> <p>1 behalf of HCMFA in May of 2019 to bind HCMFA to such</p> <p>2 notes?</p> <p>3 A. No.</p> <p>4 Q. Thank you, ma'am.</p> <p>5 EXAMINATION</p> <p>6 Q. (BY MR. MORRIS) Ms. Hendrix, can you get out</p> <p>7 of your pile, Exhibit Number 3.</p> <p>8 And this is the email from Dave Klos to</p> <p>9 corporate accounting on May 2nd concerning the</p> <p>10 \$2.4 million that was going to be transferred from</p> <p>11 HCMLP to HCMFA?</p> <p>12 A. Yes.</p> <p>13 Q. And how did Mr. Klos characterize that</p> <p>14 transfer?</p> <p>15 A. He called it a new intercompany loan.</p> <p>16 Q. What does a new intercompany loan mean to</p> <p>17 you?</p> <p>18 A. That means we are creating a new loan</p> <p>19 document, sending money out, tracking it as a</p> <p>20 brand-new, fresh loan.</p> <p>21 Q. And he sent this email to an email group</p> <p>22 called corporateaccounting@hcmlp.com. Do I have that</p> <p>23 right?</p> <p>24 A. Yes.</p> <p>25 Q. Were you included in that email group?</p>
<p style="text-align: right;">110</p> <p>1 A. Yes.</p> <p>2 Q. This other employee, I know you don't</p> <p>3 remember the name. Is there any other description that</p> <p>4 you can give me, what their position was, how long they</p> <p>5 worked, or is it just you remember those loans?</p> <p>6 A. I just remember we had two employee loans.</p> <p>7 Q. Approximately when was this?</p> <p>8 A. I couldn't even tell you. All the years just</p> <p>9 commingle together.</p> <p>10 Q. More than five years ago?</p> <p>11 A. Yes.</p> <p>12 Q. More than 10 years ago?</p> <p>13 A. I couldn't say.</p> <p>14 MR. AIGEN: Why don't we take a five-minute</p> <p>15 break and then I'll either be done or have just a few</p> <p>16 wrap-up questions.</p> <p>17 MR. RUKAVINA: Okay.</p> <p>18 (Off the record.)</p> <p>19 FURTHER EXAMINATION</p> <p>20 Q. (BY MR. RUKAVINA) Ms. Hendrix, in May of</p> <p>21 2019, would you on behalf of Highland alone,</p> <p>22 unilaterally, have the authority to lend to HCMFA 2.4-</p> <p>23 and/or \$5.0 million?</p> <p>24 A. No.</p> <p>25 Q. And would you have had any authority on</p>	<p style="text-align: right;">112</p> <p>1 A. I was.</p> <p>2 Q. Can you identify everybody else who you</p> <p>3 recall being in that email group?</p> <p>4 A. Yes.</p> <p>5 Q. Who else was in that email group?</p> <p>6 A. Dave Klos, Frank Waterhouse, myself, Hayley</p> <p>7 Eliason, and Blair Roeber.</p> <p>8 Q. Okay. Did Mr. Waterhouse ever tell anybody,</p> <p>9 to the best of your knowledge, in May 2019 that the</p> <p>10 transaction should not be booked as a loan?</p> <p>11 A. No, not to my knowledge.</p> <p>12 Q. You testified earlier that there was, you</p> <p>13 recall, a similar email the next day with respect to a</p> <p>14 \$5 million transaction.</p> <p>15 Do you recall that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you recall if that email also went to</p> <p>18 corporate accounting?</p> <p>19 A. I believe so, yes.</p> <p>20 Q. And to the best of your knowledge, would</p> <p>21 Mr. Waterhouse have been informed on May 3, 2019, that</p> <p>22 the transaction was being booked by the corporate</p> <p>23 accounting department as a loan?</p> <p>24 A. Yes.</p> <p>25 Q. Did Mr. Waterhouse tell you at that time or</p>

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<p style="text-align: right;">113</p> <p>1 at any time thereafter that it was a mistake to book it 2 as a loan? 3 A. No. 4 Q. Did Mr. Waterhouse tell you at that time or 5 at any time thereafter that he didn't intend to sign 6 the promissory notes? 7 A. No. 8 MR. RUKAVINA: Objection. To the last 9 question, objection to form. 10 Go ahead. 11 Q. (BY MR. MORRIS) Okay. The promissory notes, 12 to be clear, are the two promissory notes that you 13 testified to earlier that have been marked as exhibits 14 in this deposition for \$5 million and \$2.4 million 15 respectively. 16 With that definition as promissory notes, did 17 Mr. Waterhouse ever tell you at any time that it was a 18 mistake to sign those notes? 19 MR. RUKAVINA: I'll object to the form. 20 Go ahead. 21 THE WITNESS: No. 22 Q. (BY MR. MORRIS) Did Mr. Waterhouse or 23 anybody -- withdrawn. I'll go back to the first 24 question. 25 Did Mr. Waterhouse or anybody in the world</p>	<p style="text-align: right;">115</p> <p>1 HCMFA. I oversaw all other aspects of the audit my 2 team carried out. 3 Any requests from the auditors, emails with 4 questions, any issues that arose, all of that went 5 through me. 6 Q. And did Mr. Waterhouse play a role in 7 relation to the annual audit? 8 A. Yes. 9 Q. What is your understanding of 10 Mr. Waterhouse's role? 11 A. Let's see. He was in charge of reviewing the 12 financial statements as they were done, so he saw the 13 end product. He would sign off on the management rep 14 letter. He signed engagement letters. 15 If there were any big issues, those got -- 16 those would be brought to Frank's attention for sure. 17 Q. Okay. And are you a CPA? 18 A. Yes. 19 Q. And are you familiar with management rep 20 letters? 21 A. Yes. 22 Q. What is your understanding of what a 23 management rep letter is? 24 A. That's basically telling the auditors that 25 everything in the audited financial report is accurate</p>
<p style="text-align: right;">114</p> <p>1 ever tell you at any time since May of 2019 that it was 2 a mistake to issue the promissory notes as we've 3 defined them? 4 A. No. 5 Q. Did Mr. Waterhouse or anybody in the world 6 tell you that Mr. Waterhouse wasn't authorized to affix 7 his signature to those promissory notes? 8 MR. RUKAVINA: And I'll object. Assumes 9 facts not in evidence, i.e., the signature. That's 10 what I've been objecting to. 11 But go ahead and answer. 12 THE WITNESS: Say it again. 13 Q. (BY MR. MORRIS) Did Mr. Waterhouse or 14 anybody in the world tell you at any time that he 15 wasn't authorized to have his signature affixed to the 16 promissory notes? 17 MR. RUKAVINA: Same objection. 18 THE WITNESS: No. 19 Q. (BY MR. MORRIS) Did you have anything to do 20 with Highland's annual audit? 21 A. Yes. 22 Q. What role did you play with respect to 23 Highland's annual audit? 24 A. I personally was in charge of completely 25 writing the entire audit report for the debtor and for</p>	<p style="text-align: right;">116</p> <p>1 to the best of their knowledge, they've presented 2 everything that they have fair and accurately, they're 3 not withholding any information. 4 Q. And do you recall that the -- Highland's 2018 5 audit was completed in early June 2019? 6 A. Yes. 7 Q. And did you cause the two promissory notes 8 that we're talking about here to be delivered to 9 PricewaterhouseCoopers in connection with the audit? 10 A. Yes. 11 Q. And were those two promissory notes delivered 12 to PricewaterhouseCoopers because they constituted 13 subsequent events? 14 A. Yes. 15 Q. Do you recall whether those promissory notes 16 were described in Highland's 2018 audited financial 17 statements? 18 A. Yes. 19 Q. And did Mr. Waterhouse or Mr. Dondero ever 20 tell you at any time that there was a mistake in the 21 audited financial statements? 22 A. No. 23 Q. Did they ever tell you -- did Mr. Waterhouse 24 or Mr. Dondero or anybody in the world ever tell you at 25 any time that the two notes were mischaracterized in</p>

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<p style="text-align: right;">117</p> <p>1 the 2018 audited financial statements of Highland 2 Capital? 3 A. No. 4 Q. Do you know whether HCMFA also had its annual 5 financial statements audited by PricewaterhouseCoopers? 6 A. Yes. 7 Q. Did you play any role in connection with that 8 audit? 9 A. Yes. 10 Q. What role did you play in connection with 11 HCMFA's audit of the 2018 financial statements? 12 A. Same exact role as with the debtors -- 13 Q. And -- 14 A. -- writing the audit report, overseeing all 15 other audit functions. 16 Q. And did you and your group cause HCMFA to 17 deliver to PricewaterhouseCoopers the two promissory 18 notes that we've been discussing from May 2019? 19 A. Yes. 20 Q. Did Mr. Waterhouse or Mr. Dondero or anybody 21 in the world ever tell you that it was a mistake to 22 deliver those promissory notes to PwC in connection 23 with HCMFA's 2018 audit? 24 A. No. 25 Q. Were those notes delivered -- withdrawn.</p>	<p style="text-align: right;">119</p> <p>1 reference to these notes in HCMFA's 2018 audited 2 financial statements? 3 MR. RUKAVINA: Same objection. 4 THE WITNESS: No. 5 Q. (BY MR. MORRIS) Okay. Do you recall, did 6 anybody in the world ever tell you that the 7 transactions described in Exhibit 3 and the other 8 document that you recall should never have been booked 9 as a loan? 10 A. No. 11 Q. Did anybody in the world tell you that you 12 made a mistake when you created those promissory notes? 13 A. No. 14 Q. Can you pull out what was marked as 15 Exhibit 16. 16 Do you understand that the Advisors provide 17 services to certain retail funds? 18 A. Yes. 19 Q. And do you recall that the services are 20 subject to an agreement that's subject to annual 21 review? 22 A. Yes. 23 Q. So looking at Exhibit 16, did you understand 24 that the retail board had asked Highland to disclose -- 25 I'll just read it from the document on page 2,</p>
<p style="text-align: right;">118</p> <p>1 Were those notes delivered to 2 PricewaterhouseCoopers because they constituted 3 subsequent events in connection with the 2018 audit? 4 A. Yes. 5 Q. Do you recall whether PricewaterhouseCoopers 6 included as a liability on HCMFA's balance sheet the 7 obligations reflected in the two promissory notes at 8 issue? 9 MR. RUKAVINA: Objection. Best evidence. 10 Answer. 11 THE WITNESS: On the 2018 financials? 12 Q. (BY MR. MORRIS) Correct. 13 A. Those would not have been included as 14 liabilities in the 2018 financials. 15 Q. Do you know if HCMFA completed their audit 16 for 2019? 17 A. No. 18 Q. Okay. Did the notes appear in HCMFA's 2018 19 audited financials under the subsequent events section? 20 A. Yes. 21 MR. RUKAVINA: Objection. Best evidence. 22 Go ahead. 23 Q. (BY MR. MORRIS) Did Mr. Dondero or -- did 24 Mr. Waterhouse or Mr. Dondero or anybody in the world 25 ever tell you that it was a mistake to include</p>	<p style="text-align: right;">120</p> <p>1 Bates number ending 881. 2 There's an email from Ms. Thedford that says, 3 quote, are there any material amounts -- withdrawn. 4 Are there any material outstanding amounts 5 currently payable or due in the future, open paren, 6 e.g., notes, close paren, to HCMLP by HCMFA or NexPoint 7 Advisors or any other affiliate that provides services 8 to the funds? 9 Do you see that? 10 A. Yes. 11 Q. And were you generally aware that that was 12 part of the annual renewal process? 13 A. Yes. 14 Q. And you made some comments earlier about 15 Ms. Thedford's response on the first page. 16 Do you recall that? 17 A. Yes. 18 Q. And you actually were able to correct certain 19 mistakes that you perceived in her response. 20 Do I have that right? 21 A. Correct. 22 Q. Do you know -- do you see where it says, 23 HCMFA due to HCMLP as of June 30, 2020, let's just call 24 it \$12.3 million. 25 Do you see that?</p>



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<p style="text-align: right;">121</p> <p>1 A. Yes.</p> <p>2 Q. And above that there is a reference to the</p> <p>3 6/30 financials.</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Do you know what the reference to the 6/30</p> <p>7 financials is?</p> <p>8 A. Yes.</p> <p>9 Q. And what is that reference?</p> <p>10 A. That is referencing the amounts on the</p> <p>11 balance sheet at 6/30 that we provided for the 15(c)</p> <p>12 materials to the board.</p> <p>13 Q. Okay. And does that \$12.3 million include,</p> <p>14 to the best of your knowledge, the principal amount of</p> <p>15 the two notes that we were talking about?</p> <p>16 A. Yes.</p> <p>17 MR. RUKAVINA: Objection. Best evidence.</p> <p>18 THE WITNESS: Yes.</p> <p>19 Q. (BY MR. MORRIS) And how do you know that?</p> <p>20 A. Because I kept their financials, I know for a</p> <p>21 fact that it included all of their outstanding notes</p> <p>22 and it most certainly included these two notes that</p> <p>23 we've been talking about today.</p> <p>24 Q. And to the best of your recollection did</p> <p>25 HCMFA provide the 6/30 financials to the retail board?</p>	<p style="text-align: right;">123</p> <p>1 was given to the retail board?</p> <p>2 A. I likely did. I can't tell you for certain</p> <p>3 that I was on the correspondence.</p> <p>4 Q. Do you recall any discussion at any time that</p> <p>5 the \$12.3 million number in Ms. Thedford's email should</p> <p>6 be changed in the final report to the retail board?</p> <p>7 A. I don't believe so.</p> <p>8 Q. Did anybody ever tell you at any time that</p> <p>9 the \$12.3 million number was incorrect?</p> <p>10 A. No.</p> <p>11 Q. Did anybody ever tell you at any time that</p> <p>12 that number wrongly included the \$7.4 million reflected</p> <p>13 in the two notes?</p> <p>14 A. No.</p> <p>15 Q. Okay. Do you recall that earlier that</p> <p>16 summer -- we looked at Exhibit 15?</p> <p>17 A. Yep.</p> <p>18 Q. And that was an attachment to an email that</p> <p>19 you personally sent to Mr. Dondero. We saw that</p> <p>20 before?</p> <p>21 A. Right.</p> <p>22 Q. And this Exhibit 15, which was attached to</p> <p>23 your email, identifies amounts due and owing from</p> <p>24 NexPoint Advisors; right?</p> <p>25 A. Right.</p>
<p style="text-align: right;">122</p> <p>1 A. Yes.</p> <p>2 Q. And to the best of your knowledge did</p> <p>3 Mr. Dondero or Mr. Waterhouse or anybody in the world</p> <p>4 ever tell you that the financial statements that were</p> <p>5 provided to the retail board were erroneous in any way?</p> <p>6 A. No.</p> <p>7 Q. Did Mr. Dondero or Mr. Waterhouse or anybody</p> <p>8 in the world ever tell you that the 6/30 financials</p> <p>9 that were given to the retail board should not have</p> <p>10 included the \$7.4 million principal amount on the two</p> <p>11 promissory notes?</p> <p>12 MR. RUKAVINA: Objection. Best evidence.</p> <p>13 Answer.</p> <p>14 THE WITNESS: No.</p> <p>15 Q. (BY MR. MORRIS) Do you know whether -- are</p> <p>16 you at all familiar with the Advisors' actual response</p> <p>17 to the retail board in October 2020?</p> <p>18 A. Say that again, please.</p> <p>19 Q. So this email string is October 2020; right?</p> <p>20 A. Right.</p> <p>21 Q. And do you understand that this is kind of a</p> <p>22 discussion between Mr. Waterhouse and Ms. Thedford as</p> <p>23 to how to respond?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever seen the actual response that</p>	<p style="text-align: right;">124</p> <p>1 Q. And it identifies amounts due and owing for a</p> <p>2 number of different entities, including HCMFA; right?</p> <p>3 A. Correct.</p> <p>4 Q. Do you know whether the amount included for</p> <p>5 HCMFA on Exhibit 15 included the principal amount due</p> <p>6 on the two promissory notes?</p> <p>7 A. It does.</p> <p>8 Q. Did Mr. Dondero or Mr. Waterhouse ever ask</p> <p>9 you why -- withdrawn.</p> <p>10 Did Mr. Dondero or Mr. Waterhouse ever ask</p> <p>11 you how the \$10.5 million number was calculated?</p> <p>12 A. No.</p> <p>13 Q. Did Mr. Dondero or Mr. Waterhouse ever</p> <p>14 suggest to you that the number was incorrect?</p> <p>15 A. No.</p> <p>16 Q. Did Mr. Dondero or Mr. Waterhouse or anybody</p> <p>17 in the world ever question the number that you gave to</p> <p>18 Mr. Dondero in the summer of 2020 concerning the</p> <p>19 principal amount due by HCMFA to HCMLP?</p> <p>20 A. No.</p> <p>21 Q. Have you ever made a payment -- withdrawn.</p> <p>22 Have you ever caused a payment to be made in</p> <p>23 connection with an intercompany loan without receiving</p> <p>24 the prior approval from either Frank Waterhouse or</p> <p>25 Mr. Dondero?</p>



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<p style="text-align: right;">125</p> <p>1 A. No.</p> <p>2 Q. Has anybody ever said to you that you made a</p> <p>3 mistake in applying a payment against principal or</p> <p>4 interest due on an intercompany loan?</p> <p>5 A. No.</p> <p>6 Q. We saw this morning, and we produced to</p> <p>7 Mr. Rukavina and he mentioned earlier, 13-week</p> <p>8 forecasts? Do you understand that?</p> <p>9 A. Yes.</p> <p>10 Q. Did you review the 13-week forecasts</p> <p>11 recently?</p> <p>12 A. Yes.</p> <p>13 Q. And we're talking specifically about the</p> <p>14 13-week forecasts for the November/December 2020 time</p> <p>15 period. Do you understand that?</p> <p>16 A. Yes.</p> <p>17 Q. Based on your review of those forecasts, did</p> <p>18 those forecasts specifically identify the principal and</p> <p>19 interest that were due on the three term notes as of</p> <p>20 December 28, 2020?</p> <p>21 A. Yes.</p> <p>22 Q. And what was the purpose of creating the</p> <p>23 13-week forecasts?</p> <p>24 A. Sure. That was to keep everybody informed</p> <p>25 who was on the cash call, Frank Waterhouse, Jim Seery</p>	<p style="text-align: right;">127</p> <p>1 A. Yes.</p> <p>2 Q. And was that information that was included on</p> <p>3 the reports to Mr. Waterhouse?</p> <p>4 A. Yes.</p> <p>5 Q. And do you recall whether there were any</p> <p>6 specific discussions in November or December of 2020</p> <p>7 concerning those payments -- withdrawn. That wasn't a</p> <p>8 good question.</p> <p>9 Did Mr. Waterhouse or -- withdrawn.</p> <p>10 Did anybody on behalf of HCMS or HCRE ever</p> <p>11 instruct you to make the payments that were due under</p> <p>12 their term notes?</p> <p>13 A. No.</p> <p>14 Q. Did anybody on behalf of NexPoint ever</p> <p>15 instruct you to make a payment that was due at year end</p> <p>16 with respect to the NexPoint term note?</p> <p>17 A. No.</p> <p>18 Q. Were you authorized to make those payments</p> <p>19 without the prior approval of either Mr. Waterhouse or</p> <p>20 Mr. Dondero?</p> <p>21 A. No.</p> <p>22 Q. I think you testified that there were certain</p> <p>23 payments that were made in January 2001 under each of</p> <p>24 the three term notes.</p> <p>25 Do I have that right?</p>
<p style="text-align: right;">126</p> <p>1 and others, keep everybody informed of upcoming</p> <p>2 payments that were due on term loans well in advance.</p> <p>3 Everybody knew about it. It was out there</p> <p>4 for everybody to see that was on these cash calls.</p> <p>5 Q. Now, is it your understanding that</p> <p>6 Mr. Waterhouse -- withdrawn.</p> <p>7 Did you email these forecasts -- withdrawn.</p> <p>8 Did anybody email these forecasts to the best</p> <p>9 of your recollection in late 2020?</p> <p>10 A. Yes.</p> <p>11 Q. And was it sent to the corporate accounting</p> <p>12 group that we saw earlier?</p> <p>13 A. It was probably sent to Frank, Seery, the DSI</p> <p>14 guys that were involved with the cash call.</p> <p>15 Q. Okay. And so did you participate in the</p> <p>16 creation of the 13-week forecasts?</p> <p>17 A. Yes.</p> <p>18 Q. What role did you play in the creation of the</p> <p>19 13-week forecasts?</p> <p>20 A. I was responsible for creating the entire</p> <p>21 thing.</p> <p>22 Q. Okay. And based on the work that you did,</p> <p>23 was one of the purposes to make sure that</p> <p>24 Mr. Waterhouse was aware of all payments that were</p> <p>25 coming due under the intercompany notes?</p>	<p style="text-align: right;">128</p> <p>1 A. Correct.</p> <p>2 MR. RUKAVINA: 2021.</p> <p>3 MR. MORRIS: Thank you very much.</p> <p>4 Q. (BY MR. MORRIS) With that amendment, do you</p> <p>5 understand my question?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know why the three payments were made</p> <p>8 in January of 2021 on each of three term notes?</p> <p>9 A. Because Frank Waterhouse instructed me to do</p> <p>10 so.</p> <p>11 Q. And he had not instructed you to make those</p> <p>12 payments prior to that time?</p> <p>13 A. Correct.</p> <p>14 Q. Did you have to prompt Frank Waterhouse in</p> <p>15 January of 2021 to make those payments?</p> <p>16 A. No.</p> <p>17 Q. So based on the 13-week forecast that you</p> <p>18 prepared and delivered to Mr. Waterhouse, is it your</p> <p>19 understanding that Mr. Waterhouse knew as early as mid</p> <p>20 November 2020 that payments would be due under the</p> <p>21 three term notes at the end of the year?</p> <p>22 A. Yes.</p> <p>23 Q. And, in fact, did HCMS and HCRE and NexPoint</p> <p>24 timely make their installment payments that were due at</p> <p>25 year end 2018?</p>

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<p style="text-align: right;">129</p> <p>1 A. Yes.</p> <p>2 Q. And was that done because HCMLP received the</p> <p>3 instructions of somebody authorized to give the</p> <p>4 instruction on behalf of those entities?</p> <p>5 A. Yes.</p> <p>6 Q. Did HCMS and HCRE and NexPoint timely make</p> <p>7 the installment payments that were due at year end</p> <p>8 2019?</p> <p>9 A. Yes.</p> <p>10 Q. And why did they make those payments?</p> <p>11 A. Because we were provided instruction and</p> <p>12 authorization to do so.</p> <p>13 Q. Okay. And is the only reason that the</p> <p>14 payment wasn't made at year end 2020 because nobody on</p> <p>15 behalf of the Advisors -- withdrawn.</p> <p>16 Is the only reason that no payment was made</p> <p>17 at the end of 2020 is because no one on behalf of</p> <p>18 NexPoint, HCRE, or HCMS directed HCMLP to make those</p> <p>19 payments?</p> <p>20 A. Correct.</p> <p>21 MR. AIGEN: Objection. Form.</p> <p>22 Q. (BY MR. MORRIS) And you testified earlier to</p> <p>23 a call that you had with Mr. Waterhouse. I think you</p> <p>24 said it was either November 30 or December 1.</p> <p>25 Do you recall that?</p>	<p style="text-align: right;">131</p> <p>1 any reason they weren't, then they were going to raise</p> <p>2 an issue, a going concern issue.</p> <p>3 That came up several years in a row with</p> <p>4 HCMFA.</p> <p>5 Q. Do you recall that the three term notes at</p> <p>6 issue here were all signed on May 31, 2017?</p> <p>7 A. Yes.</p> <p>8 Q. And all of those term notes involved a</p> <p>9 roll-up of previously issued demand notes; is that</p> <p>10 right?</p> <p>11 A. Correct.</p> <p>12 Q. Do you know why in -- at the end of May 2017</p> <p>13 NexPoint, HCRE, and HCMS rolled up their demand notes</p> <p>14 into individualized term notes?</p> <p>15 A. Yes.</p> <p>16 Q. What is your understanding as to why that</p> <p>17 happened?</p> <p>18 A. That would get the auditors a little bit more</p> <p>19 comfort over our outstanding loans, ensuring that we</p> <p>20 have an amortization schedule, an underlying contract,</p> <p>21 showing that payments will be coming in every year on</p> <p>22 these outstanding receivables.</p> <p>23 Q. Okay. As the person responsible for</p> <p>24 preparing Highland's audit, did anybody ever tell you</p> <p>25 at any time that any of the notes were not valid</p>
<p style="text-align: right;">130</p> <p>1 A. Yes.</p> <p>2 Q. And did you personally continue to prepare</p> <p>3 the 13-week forecasts after your conversation with</p> <p>4 Mr. Waterhouse?</p> <p>5 A. Yes.</p> <p>6 Q. And did those 13-week forecasts continue to</p> <p>7 include the payments that were due under the three term</p> <p>8 notes at the year end?</p> <p>9 A. Yes.</p> <p>10 Q. And that's information that you gave to</p> <p>11 Mr. Waterhouse; is that right?</p> <p>12 A. Right.</p> <p>13 Q. Mr. Rukavina elicited from you the fact that</p> <p>14 payments of principal hadn't been made on demand notes</p> <p>15 that were executed in favor of Mr. Dondero's</p> <p>16 affiliates.</p> <p>17 Do you recall that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Was that a topic of conversation with</p> <p>20 PricewaterhouseCoopers at any time?</p> <p>21 A. Yes.</p> <p>22 Q. Can you tell me about that conversation?</p> <p>23 A. Sure. As part of our annual audit, the</p> <p>24 auditors would, you know, make sure that our</p> <p>25 receivables are collectible. And if they thought for</p>	<p style="text-align: right;">132</p> <p>1 obligations of the maker?</p> <p>2 A. No.</p> <p>3 Q. As the person responsible for Highland's</p> <p>4 audit, did anybody ever tell you at any time that any</p> <p>5 of the notes at issue should not have been signed?</p> <p>6 A. No.</p> <p>7 Q. As the person responsible for Highland's</p> <p>8 audit, did anybody ever tell you at any time that any</p> <p>9 of the notes at issue were signed by mistake?</p> <p>10 A. No.</p> <p>11 Q. Did anybody ever tell you at any time that --</p> <p>12 withdrawn.</p> <p>13 As the person responsible for Highland's</p> <p>14 audit, did anybody ever tell you at any time that</p> <p>15 Mr. Dondero didn't approve of any of the notes?</p> <p>16 A. No.</p> <p>17 Q. As the person responsible for Highland's</p> <p>18 audit, did anybody ever tell you at any time that</p> <p>19 the -- any of the notes at issue were subject to an</p> <p>20 oral agreement?</p> <p>21 A. No.</p> <p>22 Q. As the person responsible for Highland's</p> <p>23 audit, did anybody ever tell you at any time that any</p> <p>24 of the notes were amended?</p> <p>25 A. No.</p>

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<p style="text-align: right;">133</p> <p>1 Q. As the person responsible for Highland's</p> <p>2 audit, did anybody ever tell you at any time that any</p> <p>3 of the notes would be forgiven?</p> <p>4 A. No.</p> <p>5 Q. During your 15 years at Highland, has an</p> <p>6 intercompany loan ever been forgiven in whole or in</p> <p>7 part?</p> <p>8 A. No.</p> <p>9 Q. During your -- withdrawn.</p> <p>10 Can you recall any note that Highland ever</p> <p>11 held as the payee that was forgiven in whole or in part</p> <p>12 in the five years prior to bankruptcy, go back to 2014?</p> <p>13 A. No.</p> <p>14 Q. Is it your understanding as the person</p> <p>15 responsible for Highland's audit that the forgiveness</p> <p>16 of notes, if they were in a material amount, would have</p> <p>17 had to have been disclosed in the audited financial</p> <p>18 statements?</p> <p>19 A. Yes.</p> <p>20 Q. So is it fair to say that any evidence of the</p> <p>21 forgiveness of material amounts would have been</p> <p>22 disclosed in Highland's financial statements?</p> <p>23 A. Yes.</p> <p>24 MR. MORRIS: I have no further questions.</p> <p>25 MR. RUKAVINA: I have none.</p>	<p style="text-align: right;">135</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2 I, BRANDON D. COMBS, a Certified Shorthand</p> <p>3 Reporter, hereby certify that the witness in the</p> <p>4 foregoing deposition was by me duly sworn to tell the</p> <p>5 truth, the whole truth, and nothing but the truth in the</p> <p>6 within-entitled cause;</p> <p>7 That said deposition was taken in shorthand by</p> <p>8 me, a disinterested person, at the time and place</p> <p>9 therein stated, and that the testimony of the said</p> <p>10 witness was thereafter reduced to typewriting, by</p> <p>11 computer, under my direction and supervision;</p> <p>12 That before completion of the deposition,</p> <p>13 review of the transcript was not requested. If</p> <p>14 requested, any changes made by the deponent (and</p> <p>15 provided to the reporter) during the period allowed are</p> <p>16 appended hereto.</p> <p>17 I further certify that I am not of counsel or</p> <p>18 attorney for either or any of the parties to the said</p> <p>19 deposition, nor in any way interested in the event of</p> <p>20 this cause, and that I am not related to any of the</p> <p>21 parties thereto.</p> <p>22 DATED: November 1, 2021</p> <p>23</p> <p>24 _____</p> <p>25 Brandon Combs, Certified Shorthand</p>
<p style="text-align: right;">134</p> <p>1 MR. AIGEN: None.</p> <p>2 MR. RUKAVINA: Okay. Thank you very much.</p> <p>3 (Whereupon, the deposition adjourned at</p> <p>4 1:19 P.M.)</p> <p>5 --oOo--</p> <p>6 I declare under penalty of perjury that the</p> <p>7 foregoing is true and correct. Subscribed at</p> <p>8 _____, Texas, this ____ day of</p> <p>9 _____, 2021.</p> <p>10</p> <p>11</p> <p>12 _____</p> <p>13 KRISTIN HENDRIX</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">136</p> <p>1 State of Texas</p> <p>2 Dickman Davenport, Inc. Cert 312</p> <p>3 4228 North Central Expressway</p> <p>4 Suite 101, Dallas, TX 75206</p> <p>5 (214) 855-5100 (800) 445-9548</p> <p>6 Email: info@dickmandavenport.com</p> <p>7 www.dickmandavenport.com</p> <p>8 My commission expires 1-31-23</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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